

ate with the recommendation that it do pass.

REDDITT, Chairman.

**Reports of Committees on Engrossed and Enrolled Bills**

Committee Room,  
October 20, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We your Committee on Engrossed Bills, beg to report we have carefully examined, compared and read Senate Bills Nos. 13, 16, and 24, and find same correctly engrossed.

ROBERTS, Chairman.

Committee Room,  
October 20, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Enrolled Bills, beg to report we have carefully examined, compared and read Senate Bills Nos. 10, 1, 6, and 8, and find same correctly enrolled.

WESTERFELD, Chairman.

**FOURTEENTH DAY CONTINUED**

(Friday, October 22, 1937.)

The Senate met at 10 o'clock a. m., and was called to order by the President.

**Committee Substitute for House Bill No. 23 on Second Reading**

The President laid before the Senate as a special order for this hour, on its second reading and passage to third reading:

C. S. for H. B. No. 23, A bill to be entitled "An Act to raise revenue for the Old Age Assistance Fund, Available School Fund, Blind Fund, Dependent and Destitute Children's Fund, the Teachers' Retirement Fund, and the General Revenue Fund; amending Section 40A of Article 7047, Revised Civil Statutes of Texas, 1925, as amended by Acts, 1931, Forty-second Legislature, Regular Session, Page 355, Chapter 212, Section 1, as amended by Acts 1936, Forty-fourth Legislature, Third Called Session, Page 2040, Chapter

495, Article 4, Section 6; amending Section 2, Subdivision 1, Article 7057a of the Revised Civil Statutes of Texas, 1925, same being Section 2, Subsection 1, Chapter 162, Acts of the Forty-third Legislature, Regular Session, 1933, as amended by Acts of the First Called Session of the Forty-third Legislature, 1933, Chapter 12, Section 1, as amended by Acts of the Third Called Session of the Forty-fourth Legislature, 1936, Chapter 495, Article 4, Section 4; amending Section 3, Chapter 73, Acts of the Regular Session of the Forty-second Legislature, as amended by Acts of the Third Called Session of the Forty-fourth Legislature, Chapter 495, Article 4, Section 8; amending Article 7059, Revised Civil Statutes of 1925, as amended by Acts 1936, Forty-fourth Legislature, Third Called Session, page 2040, Chapter 495, Article 4, Section 2; amending Article 7070, Revised Civil Statutes of Texas, 1925, as amended by Acts of the Third Called Session of the Forty-fourth Legislature, 1936, Article 4, Section 1, House Bill No. 8; amending Section 3, Chapter 241, Acts of the Regular Session, Forty-fourth Legislature, page 575, as amended by Chapter 495, House Bill No. 8, Acts of the Third Called Session of the Forty-fourth Legislature, and as amended by Chapter 6, Senate Bill No. 247, Acts of the Regular Session of the Forty-fifth Legislature; amending Article 7060, Revised Civil Statutes of 1925, as amended by Chapter 34, Acts of the Fifth Called Session of the Forty-first Legislature, as amended by Article IV, Section 3, Chapter 495, Acts of the Third Called Session of the Forty-fourth Legislature; amending Chapter 467, Acts of the Second Called Session of the Forty-fourth Legislature, as amended by Chapter 495, Acts of the Third Called Session of the Forty-fourth Legislature, as amended by H. B. No. 5, Acts of the Regular Session of the Forty-fifth Legislature, as amended by Senate Bill 20, Acts of the First Called Session of the Forty-fifth Legislature; stating the intention of the Legislature with reference to providing revenue for the Teachers' Retirement Fund; providing that the State shall have a prior lien for delinquent taxes, fines, penalties, and interest due under the provisions of this Act; preserving

taxes, penalties, and interest accruing from any amended and/or repealed provisions set out in the Act before the effective date thereof; providing that if any portion of this Act is held invalid or unconstitutional such decision shall not affect the remaining portions of the Act; repealing all laws in conflict herewith; and declaring an emergency."

Senator Rawlings raised a point of order on consideration of the bill at this time, on the ground that printed copies of the bill have not been on the desks of the Senators for 24 hours, as required by Senate Rule No. 31a.

The President sustained the point of order.

Senator Aikin moved that Senate Rule No. 31a, requiring printed copies of a bill to be on the desks of members 24 hours before its consideration, be suspended, to permit consideration of the bill at this time.

The motion prevailed by the following vote:

## Yeas—19

Aikin	Newton
Burns	Oneal
Cotten	Pace
Davis	Redditt
Head	Shivers
Hill	Spears
Isbell	Sulak
Moore	Westerfeld
Neal	Woodruff
Nelson	

## Nays—9

Brownlee	Small
Collie	Stone
Holbrook	Weinert
Rawlings	Winfield
Roberts	

## Absent—Excused

Beck	Van Zandt
Lemens	

Senator Rawlings raised the point of order that copies of the calendar showing the bill as a special order for this hour have not been on the desks of members for the period of time required by the Rules of the Senate.

The President sustained the point of order.

Senator Aikin moved that that portion of Senate Rule No. 31a requiring that the calendar for each day be on the desks of members on or before 12 o'clock noon of the preceding day be suspended, to permit consideration of the bill at this time.

The motion prevailed by the following vote:

## Yeas—19

Aikin	Newton
Burns	Oneal
Cotten	Pace
Davis	Redditt
Head	Shivers
Hill	Spears
Isbell	Sulak
Moore	Westerfeld
Neal	Woodruff
Nelson	

## Nays—9

Brownlee	Small
Collie	Stone
Holbrook	Weinert
Rawlings	Winfield
Roberts	

## Absent—Excused

Beck	Van Zandt
Lemens	

Senator Rawlings raised the point of order that under Joint Rule No. 20 the bill may not be taken up for consideration except on calendar Wednesday and Thursday of each week.

The President overruled the point of order.

The bill then was read second time.

Senator Hill submitted the following point of order:

I raise the point of order on that portion of Committee Substitute for H. B. No. 23 as follows: On printed page 18 beginning at line 26 through line 46 on printed page 21 which provides for the sale of liquor by the drink for the following reasons:

(1) That said portion of said bill does not come within the Governor's call.

(2) That this portion of the bill violates the provision of the Constitution of the State of Texas which provides that a bill cannot be amended so as to change the original purpose of the bill.

HILL.

The President overruled the point of order.

Senator Burns raised the point of order that the sections of the bill relating to sale of alcoholic liquors are in violation of Section 20 of Article 16 of the Constitution and the General Law heretofore enacted pursuant thereto for the purpose of prohibiting operation of open saloons.

The President overruled the point of order.

Senator Small offered the following amendment to the bill:

Amend Committee Substitute for H. B. No. 23, Section 3a, page 5, by striking out lines 17, 18, 19, 20, 21, 22, 23, and 24.

The amendment was adopted.

Senator Small offered the following amendment to the bill:

Amend H. B. No. 23 by striking out all of Section 8 and inserting in lieu thereof the following:

Section 8. That Article 7084 of the Revised Civil Statutes of 1925, as amended by the Acts of 1930, Forty-first Legislature, Fifth Called Session, page 220, Chapter 68, Section 2, and as amended by the Acts of 1931, Forty-second Legislature, page 441, Chapter 265, Section 1, be amended so as to hereafter read as follows:

Article 7084. Amount of tax—(A) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas, shall, on or before May 1st of each year, pay in advance to the Secretary of State a franchise tax for the year following, based upon that proportion of the outstanding capital stock, surplus and undivided profits, plus the amount of outstanding bonds, notes and debentures, other than those maturing in less than a year from date of issue, as the gross receipts from its business done in Texas bears to the total gross receipts of the corporation from its entire business, which tax shall be computed at the following rates for each One Thousand (\$1,000.00) Dollars or fractional part thereof: One Dollar (\$1.00) to One Million Dollars (\$1,000,000.00), ninety cents (90c); in excess of One Million Dol-

lars (\$1,000,000.00), forty-five cents (45c); provided, that such tax shall not be less than Ten Dollars (\$10.00) in the case of any corporation, including those without capital stock. Where a foreign corporation applying for a permit has theretofore done no business in Texas, such tax shall not be payable until the end of one year from the date of such permit, at which time the tax shall be computed according to first year's business; and, at the same time, such corporation shall also pay its tax in advance, based upon the first year's business, for the period from the end of the first year to and including May 1st following. In all other cases, the tax shall be computed from the data contained in the reports required by Articles 7087 and 7089, capital stock as applied to corporations without capital stock shall mean the net assets.

(B) Corporations which are now required by law to pay annually a tax upon intangible assets, corporations owning or operating street railways in or upon the public streets of any town or city, and corporations organized to maintain or owning or operating electric inter-urban railways, shall be required to hereafter pay a franchise tax equal to one-fifth (1/5) of the franchise tax herein imposed against all other corporations under Section (A) herein.

(C) Provided, however, that this Act shall not apply to corporations organized as terminal companies not organized for profit, and having no income from the business done by them.

(D) Except as provided in preceding clauses (B) and (C), all public utility corporations, which shall include every such corporation engaged solely in the business of a public utility whose rates or service is regulated, or subject to regulation in whole or in part, by law, shall pay a franchise tax as provided in this Act, except the same shall be based on that proportion of the issued and outstanding capital stock, surplus and undivided profits, which the gross receipts of the business of said corporation done in this State bears to its total gross receipts, instead of the gross receipts; and in lieu of the rate hereinbefore prescribed said tax shall be computed as follows:

One Dollar (\$1.00) to One Million Dollars (\$1,000,000.00) ninety-seven cents (97c) for each One Thousand Dollars (\$1,000.00), or fractional part thereof;

Sixty-seven (67c) for each One Thousand Dollar (\$1,000.00) or fractional part thereof in excess of One Million Dollars (\$1,000,000.00) and not exceeding Ten Million Dollars (\$10,000,000.00);

And Fifty-two Cents (52c) for each One Thousand Dollars (\$1,000.00) or fractional part thereof in excess of Ten Million Dollars (\$10,000,000.00);

For the purpose of computing the tax of corporations issuing no par stock, such stock shall be taken and considered as being of the value actually received at the time of the issuance thereof; and foreign corporations issuing such stock shall furnish the Secretary of State with the same information now required of domestic corporations issuing such stock.

(E) Corporations engaged partly in the business of a public utility as defined in clause (D) and partly in businesses embraced in clause (A) shall pay the franchise tax in the following manner: As to those businesses which come under clause (A) the tax shall be computed as provided in clause (A) on that proportion of the entire taxable capital under said clause (A) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation; and to those businesses which come under clause (D) the tax shall be computed as provided in clause (D) on that proportion of the entire taxable capital under said clause (D) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation. The period for which such gross receipts are taken shall be the same period used in computing the proportion of Texas taxable capital under clauses (A) and (D).

(F) Corporations which are now required to pay a separate franchise tax for each purpose or business authorized by their charters shall hereafter pay only the tax provided hereunder for one purpose, and one-fourth ( $\frac{1}{4}$ ) of such amount for each additional purpose named in their charters.

Pending consideration of the amendment, Senator Collie occupied the chair temporarily.

(President in the Chair.)

The amendment was adopted.

Senator Shivers offered the following amendments to the bill:

(1)

Amend Committee Substitute for H. B. No. 23, Section 3a, page 5, line 25, by adding after the word, "producer," the following:  
"and purchaser"

(2)

Amend Committee Substitute for H. B. No. 23, Section 3a, page 5, line 30, by adding after the word, "producer," the following:  
"or other interest holder, including royalty holder"

The amendments were adopted severally.

Senator Small offered the following amendment to the bill:

Amend H. B. No. 23 by adding a new section to be designated Section 8(A) as follows:

Section 8(A). The net revenue derived from the franchise tax herein levied and collected shall be allocated as follows:

(A) Two-thirds ( $\frac{2}{3}$ ) of the net revenue shall be credited to the General Revenue Fund; and

(B) One-third ( $\frac{1}{3}$ ) of the net revenue collected during each fiscal year shall be allocated to the Dependent and Destitute Children's Fund until said fund is credited during each fiscal year with the sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00), after which the remaining sums, if any, out of said one-third ( $\frac{1}{3}$ ), shall be credited to the General Revenue Fund. It being the intention of the Legislature to allocate the sum of Seven Hundred Fifty Thousand (\$750,000.00) Dollars out of said one-third ( $\frac{1}{3}$ ) to said fund for the care of Dependent and Destitute Children. All sums received in said fund shall be expended under and by virtue of House Bill No. 7, passed at the Regular Session of the Forty-fifth Legislature, creating the Division of Public Welfare, and said sums as are hereby appropriated are

for the biennium ending August 31, 1939.

The amendment was adopted.

Senator Nelson offered the following amendment to the bill:

Amend Committee Substitute to House Bill No. 23 by striking out all of Section No. 9 thereof beginning on page 18 of the printed bill and concluding on page 21 thereof, same having to do with the sale of liquor by the drink.

NELSON,  
HILL,  
BURNS,  
ISELL,  
LEMENS,  
AIKIN,  
HEAD,  
COTTEN,  
ONEAL,  
WOODRUFF,  
DAVIS,  
COLLIE.

Senator Hill moved the previous question on the amendment and the passage of the bill to third reading, and the motion was not seconded.

Senator Woodruff moved the previous question on the amendment, and the motion was not seconded.

Question recurring on the amendment, yeas and nays were demanded.

The amendment was adopted by the following vote:

#### Yeas—17

Aikin	Nelson
Burns	Oneal
Collie	Pace
Cotten	Redditt
Davis	Small
Head	Van Zandt
Hill	Westerfeld
Isbell	Woodruff
Lemens	

#### Nays—13

Brownlee	Shivers
Holbrook	Spears
Moore	Stone
Neal	Sulak
Newton	Weinert
Rawlings	Winfield
Roberts	

#### Absent—Excused

Beck

Senator Moore offered the following amendment to the bill:

Whereas, This session is for the purpose of balancing the budget as stated in the message of the Governor, making available funds for the necessary functions of government and further making available funds for old age assistance, the blind and dependent children; and

Whereas, Such can and should be done in so far as possible by the reduction of expenditures;

Therefore, This is sought to be accomplished by the succeeding two sections of the bill:

[The succeeding portion of the amendment comprises a general appropriation bill for the various executive and administrative departments and agencies of the State.]

Senator Small moved the previous question on the amendment and the passage of the bill to third reading, and the motion was duly seconded.

Senator Oneal called for a division of the question.

The Senate refused to order the main question on the amendment at this time by the following vote:

#### Yeas—6

Brownlee	Redditt
Head	Small
Pace	Van Zandt

#### Nays—23

Aikin	Oneal
Burns	Rawlings
Collie	Roberts
Cotten	Shivers
Davis	Spears
Holbrook	Stone
Isbell	Sulak
Lemens	Weinert
Moore	Westerfeld
Neal	Winfield
Nelson	Woodruff
Newton	

#### Absent

Hill

#### Absent—Excused

Beck

Senator Burns raised the point of order that the amendment is not germane to the bill.

The President sustained the point of order.

Senator Roberts appealed from the ruling of the President.

Senator Holbrook was called to the Chair pending the appeal.

Question—Shall the ruling of the President be sustained?

The Senate sustained the ruling of the President by the following vote:

Yeas—15

Brownlee	Newton
Burns	Oneal
Davis	Redditt
Hill	Small
Isbell	Van Zandt
Lemens	Westerfeld
Neal	Woodruff
Nelson	

Nays—14

Aikin	Roberts
Collie	Shivers
Cotten	Spears
Head	Stone
Holbrook	Sulak
Moore	Weinert
Rawlings	Winfield

Absent

Pace

Absent—Excused

Beck

Verification of Vote

Senator Moore called for a verification of the vote.

The roll of those recorded as voting "yea" was called; the roll of those recording voting "nay" was called; and the roll of those recorded as "absent" and "absent, excused" was called.

The verified vote stood, as first announced, yeas 15, nays 14, absent and absent-excused, 2.

Question—Shall the bill be passed to third reading?

Messages From the House

A Clerk from the House was recognized to present the following messages:

Hall of the House of Representatives,  
Austin, Texas,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bill:

S. B. No. 24, A bill to be entitled "An Act fixing the compensation of the county attorneys in all counties in the State of Texas having a population of more than forty-eight thousand five hundred and forty (48,540) and less than forty-eight thousand eight hundred (48,800), according to the last preceding or any future Federal Census, repealing all laws and parts of laws in conflict herewith to the extent of such conflict only, and declaring an emergency."

The House has concurred in Senate amendments to House Bill No. 71 by a vote of 120 yeas, no noes.

The House has concurred in Senate amendments to House Bill No. 131, by a vote of 106 yeas, 12 noes.

S. B. No. 9, A bill to be entitled "An Act authorizing County Commissioners' Courts to lease or rent office space for the purpose of aiding and cooperating with the agencies of the State and Federal governments engaged in the administration of relief of the unemployed and needy people in the State of Texas, and to pay the regular monthly utility bills for such offices, such as lights, gas and water; to pay for such leases, rentals and utilities out of the County General Fund when in the opinion of a majority of the Commissioners' Court such is essential to a proper administration of such agencies of either the State or Federal governments; providing for the validation of all actions, proceedings, orders and contracts for such rental, lease or utility bills heretofore made by any County Commissioners' Courts; providing that if any part in this Act shall ever be held unconstitutional, such holding shall not affect the validity of the remaining portions of the Act; and declaring an emergency." (With amendments.)

S. B. No. 26, A bill to be entitled "An Act authorizing cities and towns to make contracts with water improvement and water control and improvement districts deriving their powers under Article XVI, Section 59, of the Constitution for water supply, fixing the maximum term of such contracts, limiting the liabilities of cities and towns under such contracts, making an election in such cities and towns a prerequisite to the making of such contracts; etc., and declaring an emergency."

S. B. No. 12, A bill to be entitled "An Act providing that in counties having a population of not less than forty thousand nine hundred and five (40,905) and not more than forty-one thousand (41,000) according to the last preceding Federal Census, the County Judge may appoint a court stenographer to be called and known as the official County Court Reporter of the County Court; etc., and declaring an emergency."

Respectfully submitted,

LOUISE SNOW PHINNEY,  
Chief Clerk, House of Representatives.

#### Bills and Resolution Signed

The President signed, in the presence of the Senate, after giving due notice thereof, the following bills and resolution:

H. B. No. 131, "An Act making an appropriation of the sum of seventy-five thousand (\$75,000.00) dollars or so much thereof as may be necessary, out of funds in the State Treasury, not otherwise appropriated, to pay contingent expenses, and to pay mileage and per diem of members and per diem of officers and employees of the Second Called Session of the Forty-fifth Legislature, etc., and declaring an emergency."

S. B. No. 24, "An Act fixing the compensation of the county attorneys in all counties in the State of Texas having a population of more than forty-eight thousand five hundred and forty (48,540) and less than forty-eight thousand eight hundred (48,800), according to the last preceding or any future Federal Census, repealing all laws and parts of laws in conflict herewith to the extent of such conflict only, and declaring an emergency."

S. C. R. No. 11, Expressing the opposition of the Legislature of Texas to a resolution now pending in Congress relating to the ownership of submerged lands.

#### Reports of Standing Committees

(By Unanimous Consent)

Reports on Senate Bill No. 27, on House Bills Nos. 38, 62, 102, 103, 110, 113, 130, 133, and 135, and on S. C. R. No. 8 were submitted by the chair-

men of the several committees to which they were referred.

#### Recess

On motion of Senator Hill, the Senate, at 12:30 o'clock p. m., took recess to 2:30 o'clock p. m. today.

#### AFTERNOON SESSION

The Senate met at 2:30 o'clock p. m. and was called to order by the President.

#### Reports of Standing Committees

(By Unanimous Consent)

Reports on S. B. No. 23, H. B. No. 38, H. B. No. 20 and H. B. No. 119 were submitted by the chairmen of the committees to which they were referred.

#### Committee Substitute for House Bill No. 23 on Passage to Third Reading

The Senate resumed consideration of pending business, same being C. S. for H. B. No. 23, known as the omnibus tax bill, on its passage to third reading.

Senator Shivers offered the following amendment to the bill:

Amend Substitute for House Bill No. 23 by adding a new Section to read as follows:

"1. There is hereby levied a tax upon the sale, use, consumption, handling or distribution within the State of Texas of all bottled soft drinks as herein defined and all soft drink syrups as herein defined, said tax to be levied at the following rates:

(a) On bottled soft drinks a tax of one (1) cent on each five (5) cents or fractional part thereof of the retail selling price.

(b) On syrups a tax of twenty (20) cents on each one-fourth ( $\frac{1}{4}$ ) of a standard gallon or fractional part thereof.

(c) On soft drinks already prepared and ready to serve, without further flavoring, mixing, blending or compounding, in glasses or containers other than bottles, at soda fountains and similar places, a tax of one (1) cent on each five (5) cents or fractional part thereof.

"2. The following words, terms and phrases as used in this Section are hereby defined and shall be construed as follows:

(a) "Bottled Soft Drinks" shall mean and include any and all beverages of whatsoever kind or description whether carbonated or not and whether manufactured with or without the use of syrup or flavoring when such beverages are sold in bottles or are prepared for sale or use in bottles such as soda water, ginger ale, Delaware Punch, Nu-grape, Coca-Cola, Lime-Cola, Pepsi-Cola, Dr. Pepper, Seven-up, fruit juice, milk drinks when mixed with flavoring or syrup, soft cider, cordial and any and all other bottled preparations commonly referred to as soft drinks regardless of the kind or description.

(b) "Syrup or Syrups" shall mean and include any mixture or basic ingredient used in the making, mixing, blending or compounding of soft drinks at soda fountains or similar places by mixing such ingredients with carbonated or plain water, ice, fruit, milk or any other product used or prepared for use in making soft drinks such as Coca-Cola syrup, Dr. Pepper syrup, Chero-Cola syrup, lemon syrup, vanilla syrup, chocolate syrup, strawberry syrup, cherry syrup, rock candy syrup, Nu-Grape syrup, simple syrup and all other prepared syrups sold or used for the purpose of mixing soft drinks at soda fountains or similar places. Simple syrup is further defined to mean any syrup made, mixed, blended, compounded or manufactured by dissolving sugar and water or any other mixture that will create what is commonly referred to as "simple syrup" for use at soda fountains or similar places.

(c) "Stamp" shall mean the stamp or stamps printed, manufactured or made by authority of the Board of Control and issued, sold or circulated by the Treasurer and by the use of which the tax levied hereunder is paid.

(d) "Crown" shall mean the crown or crowns made or manufactured by authority of the Board of Control and issued, sold or circulated by the Treasurer and by the use of which the tax levied hereunder is paid.

(e) "Counterfeit Stamp or Crown" shall mean any crown, stamp, label,

print, tag or token which evidences, or purports to evidence, the payment of any tax levied by this Act, and which crown, stamp, label, print, tag or token has not been printed, manufactured or made by authority of the Board of Control and/or issued, sold or circulated by the Treasurer.

(f) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas or his duly authorized assistants and employees.

(g) "Person" shall mean and include individuals, firms, associations, joint stock companies, syndicates, co-partnerships, corporations, trustees, agencies or receivers.

(h) "Dealer" shall mean and include every person in this State who refines, manufactures, makes, prepares, produces, mixes, blends or compounds syrups or other compound mixtures or basic ingredients to be used or for the purpose of being used in making, mixing or compounding soft drinks at soda fountains or similar places or any person who bottles, or otherwise prepares ready for consumption, any soft drink containing any of the foregoing products, preparations or mixtures for distribution, sale, use, or consumption within this State; the term dealer shall also include any person who ships, transports, imports or brings into this State any bottled soft drinks or soft drink syrup as herein defined for distribution, sale, use, or consumption in the State of Texas. Any person who has in his possession any bottled soft drinks or soft drink syrup as herein defined who cannot prove that the tax levied herein has been previously paid shall be considered and is hereby defined as a "dealer."

(i) "Wholesale Dealer" shall mean and include every person who distributes or sells any bottled soft drinks or soft drink syrup as herein defined for the purpose of resale.

(j) "Retail Dealer" shall mean and include every person other than a wholesale dealer as herein defined who shall sell, distribute, or offer for sale or distribution any of the products upon which the tax is herein levied irrespective of quantity or amount or the number of sales.

"3. The tax levied by this Section shall be paid by the dealer who first distributes, sells, uses, consumes or handles the same in this State,



but any person who acquires in any manner any of the products subject to the tax, upon which product the said tax has not been paid, shall be jointly liable for said tax.

Every dealer shall be required to affix a tax stamp or crown to the container of any bottled soft drinks or any soft drink syrup before such products are distributed, sold, used or consumed in this State; provided, however, that retail dealers who import, manufacture, mix, compound or otherwise prepare any of the products taxed herein, shall be required to affix the requisite amount of tax stamp to the container immediately after the product is received, manufactured or compounded at their retail place of business and the possession of any taxable product in any retail place of business without proper stamps affixed to the container shall be prima facie evidence that such products are possessed for the purpose of evading payment of said tax. Retail place of business shall be construed to mean any place of business where taxable products are sold or offered for sale to consumers and not for the purpose of resale. Provided, that milk drinks, and unadulterated fruit drinks in their original state, used in hospitals or sold direct to school children on school premises, or sold through a school organization to school children on school premises, shall be exempt from the tax levied by this Section of the Act.

"4. The Board of Control of this State shall be authorized and is hereby empowered to have manufactured or printed and delivered to the Treasurer in whatever quantities and denominations the Board of Control considers necessary to the enforcement of this Section tax stamps and tax crowns to evidence the payment of the tax levied herein. Said tax stamps and tax crowns shall be of a design to be selected by the said Board of Control and shall be so manufactured that the tax stamps may be easily affixed to containers and the tax crowns may be used to seal all bottled soft drinks. The said tax stamps and tax crowns shall be sold only by the Treasurer of this State except as hereinafter provided. The Comptroller may, if any person is found in possession of taxable products without stamps affixed, require said person to purchase stamps upon

a requisition to be issued by the said Comptroller from any dealer in order that said person may be required to affix the proper stamps in the presence and under the direction of the said Comptroller. Said requisition shall be issued in triplicate, the original to be kept by the Comptroller and the duplicate and triplicate to be delivered to the purchaser and seller of said stamps.

"It shall be the duty of the Treasurer to invoice the stamps ordered from him upon a form invoice to be consecutively numbered and printed in triplicate. The original invoice shall be delivered with the stamps ordered, the duplicate shall be delivered to the Comptroller and the triplicate kept by the Treasurer. Provided, that the said Treasurer is hereby empowered to promulgate rules and regulations to provide for refunds and exchanges made on stamps purchased from him; provided, however, that a complete record shall be kept of all such refunds and exchanges. The Comptroller is hereby authorized and empowered to promulgate rules and regulations for the administration and enforcement of the provisions of this Act. Said Comptroller shall have printed the necessary permit forms, report forms, requisition forms and other forms or printed matter necessary to the enforcement of this Section.

"Provided that payment for the manufacturing or printing of the tax stamps and tax crowns and the printing of the necessary forms for the Comptroller and Treasurer shall be paid by voucher issued by the Comptroller from the revenue derived from this Section before such revenue is allocated to the funds to which it is apportioned and so much of said fund is hereby appropriated for such purposes; provided that if a specific amount is necessary then there is hereby appropriated from any funds not heretofore appropriated in the Treasury the sum of Thirty-five Thousand Dollars (\$35,000.00) or so much thereof as may be necessary which fund shall be refunded to the Treasury from the first revenue derived from this Section.

"5. Every person in this State now engaged or who desires to become engaged, in the distribution or sale of any of the products taxed herein shall, within thirty (30) days

from the date this law becomes effective, make application to and obtain from the Comptroller a permit authorizing said person to distribute or sell any of the said taxable products. Said application shall be accompanied by a fee of Ten Dollars (\$10.00) if for a wholesale dealers permit or a fee of Two Dollars and Fifty Cents (\$2.50) if for a retail dealers permit. The Comptroller shall prescribe the information to be furnished on said application forms. The permit shall expire twelve (12) months from the date the dealer first sells the products taxed herein or engages in the business of selling such taxable products or from the expiration date of the permit previously issued to said person but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. A separate permit shall be obtained for each place of business owned or operated by any such person. Provided, further, that a separate permit shall be required for each kind of business for any person doing both a wholesale and a retail business. Said permit shall be revokable and shall be forfeited or suspended upon any violation of any provision of this Act or any reasonable rule or regulation promulgated by the Comptroller. If any permit is revoked or suspended, said permittee shall not sell any products taxed herein from the place of business for which the permit was issued until a new permit is granted or suspension of the old permit is removed. Provided, further, that the Treasurer may refuse to sell tax stamps or crowns to any person who has not obtained a permit or to any person whose permit has been revoked or suspended until such permit has been reinstated or a new permit issued. The permit shall at all times be publicly displayed by the permittee at each place of business so as to be easily seen by the public and persons authorized to inspect the same. The said permit shall be non-assignable and consecutively numbered.

"The Comptroller, after notice and opportunity to be heard under regulations to be made by him, shall have jurisdiction, power and authority to revoke the permits of any dealer for violation of this Section or for wilful or persistent violation of the

rules and regulations promulgated by him. No new permit shall be issued to anyone whose permit has been revoked for a period of one year except in the discretion of the Comptroller.

"6. (a) Every wholesale dealer as herein defined shall keep at each place of business in Texas, except as otherwise provided for a period of two (2) years for the inspection at all times of the Comptroller and Attorney General a complete record of all bottled soft drinks and all soft drink syrups as herein defined, purchased, received, distributed, sold, used, consumed, or otherwise disposed of by said wholesale dealer, said record to be kept in a well bound book which shall show the date said products were received, the name and address from whom purchased and from whom received, the point from which shipped or delivered, the name of the carrier, the amount, kind and quantity of all such products distributed or sold, and the name and complete address of the purchaser. Said record shall also show a complete inventory on the first of each month of the kind and quantity of all such products on hand. Provided, further, that said wholesale dealer shall keep a complete record of all tax stamps and crowns purchased or received and all tax stamps or crowns used, lost, stolen, or otherwise disposed of together with an inventory on the first of the month showing the number, denomination and face value of all tax stamps and crowns on hand.

(b) Provided, further, that every wholesale dealer shall issue an invoice in duplicate with each sale or distribution of bottled soft drinks or soft drink syrups as herein defined, which invoice shall show the date of sale or distribution, the purchaser and his address, the means of delivery, the quantity and kind of such products sold. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the wholesale dealer; provided, that when bottled soft drinks or soft drink syrups as herein defined are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided, further, that if a wholesale dealer sells bottled soft drinks or soft drink syrups as herein

defined at both wholesale and retail, it will be sufficient for said wholesale dealer and he shall be required to issue an invoice to his retail department for the quantity of products to be sold at retail and such stock of said products invoiced for retail sales shall be kept separate and apart from the other stock of said wholesale dealer.

(c) Provided, further, that every person engaged in the business of selling bottled soft drinks or soft drink syrups in interstate commerce shall be required to keep the same records and make the same reports to the Comptroller as are required of a wholesale dealer.

(d) Every retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and Attorney General a complete record of all bottled soft drinks or soft drink syrups purchased, received, manufactured, mixed, blended or compounded by said retail dealer, in a well bound book showing the date said products were received, the name and address from whom purchased or from whom received, the point from which shipped or delivered, the name of the carrier, and the quantity and kind of products received, manufactured, mixed, blended, compounded, or purchased. Provided, however, said retail dealer may in lieu of entering in said book record the foregoing information showing bottled soft drinks and soft drink syrups purchased from licensed wholesalers, file the invoices received from the wholesale dealer showing the receipt of said products.

"7. All taxes, penalties, and cost of auditing, as herein provided, due, or that might become due by any dealer to the State shall be and become a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated, upon all the property of any dealer, devoted to or used in his business as a dealer which property shall include buildings, equipment, stock, fixtures, and cash devoted to such use and other tangible property which is used in carrying on such business. If any dealer shall fail to pay any taxes and penalties due the State, the Comptroller may employ auditors or investigators to ascertain

the correct amount due, and if such taxes have not been properly paid the said dealer shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. All funds paid to the auditors of the Comptroller as expenses incurred in making audits, shall be placed in a special fund in the State Treasury, which shall be used until exhausted, for making other audits, and said funds are hereby appropriated for said purpose; provided nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

"8. (a) Every wholesale dealer shall make and deliver to the Comptroller in Austin, Travis County, Texas, on the 10th day of each month a report for the preceding calendar month, which report shall be properly sworn to and executed by the wholesale dealer, or his representative in charge, and which shall show the date said report was executed, the name and address of said wholesale dealer, the month which the report covers, the quantity of each kind of bottled soft drinks and soft drink syrups as herein defined on hand at the beginning of the month, the quantity and kind of all such products purchased and received during the month, the quantity and kind of all such products distributed, sold, used, consumed, lost, stolen, returned to the factory or disposed of in any other manner, and the quantity and kind of each such products on hand at the end of the month. Said report shall show the foregoing information separately as to stamped products and unstamped products. The report shall also show separately the quantity and kind of products sold or distributed in intrastate commerce and the quantity and kind of products sold or distributed in interstate commerce. Said report shall also show the number, denomination and face value of unused stamps and crowns on hand at the beginning of the month covered in the report, the number, denomination and face value of stamps and crowns purchased or received, the number, denomination and face value of stamps and crowns used, lost, stolen, exchanged, returned to the Treasurer, sold upon requisition from the Comptroller, or disposed of in any other manner and

the number, denomination and face value of stamps and crowns on hand at the end of the month covered in the report. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which such information required shall be set up in said report, but the failure of any dealer to obtain such form from the Comptroller shall be no excuse for the failure to file the report containing all the information required to be reported herein. Provided, further, that every dealer or other person who receives bottled soft drinks or soft drink syrup as herein defined from outside the State or who manufactures, makes, produces or prepares any such products for distribution, sale use or consumption, shall be required to keep the same records and make the same reports to the Comptroller monthly as are required of a wholesale dealer.

(b) If any dealer or other person fails to pay any tax, penalties, and cost of audit due the State and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said tax claim, in any judicial proceedings, any report filed with the Comptroller by such dealer or other person or their representatives, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the quantity and kind of bottled soft drinks and soft drink syrup sold by such dealer or other person or their representatives, upon which such tax, penalty and cost of audit has not been paid, or any audit made by the Comptroller or his representatives when signed and sworn to by such Comptroller or his representative as being made from the records of any dealer or other person or from the records of persons from whom or to whom such dealer or other person has bought, received, or delivered such taxable products, whether from the records of a transportation company or other persons handling such taxable products in any manner, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof and the burden of proof shall be upon the dealer or other person to show that any such audit or report or any part of such audit or report is incorrect. The venue of any suit,

injunction, or other proceeding in law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties and cost of audit accruing herein and the enforcement of the terms and provisions of this Section shall be in a court of competent jurisdiction in Travis County, Texas, or in any other court having venue under existing Venue Statutes.

(c) Provided that if any audit or tax claim which has been signed and sworn to by the Comptroller or his representative in the manner provided in the foregoing subsection, shows that bottled soft drinks and soft drink syrups have been delivered to any dealer or other person or have been received by any such dealer or other person, then unless such dealer or other person can furnish evidence to the Comptroller that sufficient tax stamps or crowns have been purchased to cover the tax imposed on said products or that said products had the proper and requisite amount or number of tax stamps or crowns affixed when such products were received, the said audit or tax claim shall be taken as prima facie evidence that such taxable products were sold in Texas without stamps or crowns affixed and without the tax levied herein having been paid to the State as required by law.

"9. Provided that every dealer as defined herein shall before receiving or accepting delivery of any of the products taxed herein or before refining, manufacturing, making, producing, preparing or acquiring in any other manner, any of the products taxed herein, obtain from the Treasurer or have in his possession the requisite amount or quantity of tax stamps or tax crowns necessary to stamp or seal such taxable products and the possession of any of the products taxed herein without the possession of the requisite amount or quantity of stamps or crowns shall be prima facie evidence that said taxable products are possessed for the purpose of distributing, selling, using or consuming the same without payment of the tax levied herein. Every dealer shall cause all products taxed herein to have the proper stamps or crowns affixed immediately but any dealer who has in his possession the requisite amount or quantity of stamps or crowns necessary to stamp or seal

all the products taxed herein which are in his possession may hold such products for a period of not longer than forty-eight (48) hours, excluding Sundays and legal holidays, before affixing the stamps or crowns as required herein.

"Provided, however, that any dealer may execute and file with the Comptroller an acceptable surety bond signed by the dealer and a good and sufficient surety company authorized to do business in this State which bond when approved by the Comptroller shall authorize such dealer to store any of the products taxed herein without possessing or affixing tax stamps or tax crowns until such products are ready for sale or distribution. Said bond shall be in an amount of not less than Two Hundred and Fifty Dollars (\$250.00) and not more than twice the amount necessary to stamp or seal the largest quantity of taxable products that will be stored at any time by said dealer and any quantity of taxable products so stored which is larger than that permitted in said bond shall be subject to the same requirements and penalties as taxable products possessed without a bond. The Comptroller may require additional or a new bond at any time such bond or the sureties thereon becomes unsatisfactory, which if not supplied within ten (10) days after request is made by the Comptroller shall automatically cancel any existing bond. Said bond shall be payable to the State of Texas and shall guarantee the State against any and all losses for taxes, penalties and audit costs imposed by the provisions of this section.

"10. Place of business as used in this Section shall be construed to mean and include any place where any of the products taxed herein are refined, manufactured, produced, made, prepared, distributed, sold, stored or kept for the purpose of distribution, sale or consumption; or if distributed or sold from any vehicle or train, the vehicle or train on which or from which such products are sold shall constitute a place of business. If the place of business of any dealer is a vehicle or train, such dealer shall be required to designate in the application for a permit a permanent place where the records required to be kept for such place of business will be available to the Comptroller after the products are delivered from said ve-

hicle or train and after such deliveries are made the records shall be kept at the permanent place so designated.

"11. For the purpose of enabling the Comptroller to determine the tax liability of any dealer or any other person dealing in the products taxed herein or to determine whether a tax liability has been incurred, he shall have the right to inspect any premises where such taxable products are manufactured, produced, made, prepared, stored, transported, sold, or offered for sale or exchange and to examine all the records required herein to be kept or any other records that may be kept incident to the conduct of the business of such dealer or other person dealing in the products taxed herein. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of products taxed herein, and for the foregoing purposes said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred, and it shall be unlawful for any dealer or other person to fail to produce upon demand by the Comptroller any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or said products or the examination of said premises.

"12. (a) Every common and contract carrier transporting any of the products taxed herein in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all such products so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery and the quantity or amount of such products transported or handled; such records together with all other books or records which may be in the custody of said carriers showing shipments of such products shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all taxable products in the custody of such carriers.

(b) Except by common carrier the

transportation, carriage, or movement from point to point in this State by any automobile, truck, boat, conveyance, vehicle or other means of transportation of any article or products on which the tax is levied herein, upon which article or product the said tax has not been paid, shall be unlawful and is hereby prohibited.

"13. If any dealer or other person shall fail to comply with any provision of this Section or shall violate any provision of this Section, or if any dealer or other person shall fail to comply with any rule or regulation promulgated by the Comptroller of Public Accounts of the State of Texas or shall violate any such rule and regulation that has been promulgated by the Comptroller of Public Accounts of the State of Texas, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Each day's violation shall constitute a separate offense and incur a separate penalty, and the Attorney General of Texas may file suit to recover such penalties and may enjoin the further operation of any such business until such tax is paid.

"14. All bottled soft drinks or soft drink syrups on which taxes are imposed by this Section, which shall be found in the possession, or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of this law, and all bottled soft drinks and soft drink syrups which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance or other vehicle whatsoever, used in the removal or transportation of such bottled soft drinks and soft drink syrups for such purposes, and all equipment, paraphernalia or other tangible personal property incident to and used for such purpose, found in the place, building or vehicle where such bottled soft drinks or soft drink syrups are found, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in

the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such bottled soft drinks or soft drink syrups, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

"The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisal thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

"The Attorney General, or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall be not less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a non-resident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon non-residents or unknown de-

fendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing Statutes in cases of attorneys appointed to represent non-residents and unknown defendants.

"In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and court costs, shall be paid into the State Treasury and shall be allocated as the tax on bottled soft drinks and soft drink syrups is herein allocated. In the event the district or country attorneys file and prosecute such cases, a fee of Fifteen Dollars (\$15.00) shall be paid to such officers in addition to all other fees allowed by law under any maximum fee bill, which fee shall be collected as court costs out of the proceeds of such sale.

"In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the bottled soft drinks and soft drink syrups and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars (\$500.00), or less, by the following summary proceedings:

(1) The Comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place and cause of such seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized, or any interest therein or thereto, within the time specified in such notice, may file with

the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250.00), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller, he shall transmit the same with a certified copy of the report or receipt of the property seized, filed in his office, to the Attorney General or the county or district attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and, after deducting expense of seizure, appraisal, custody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the tax on bottled soft drinks and soft drink syrups levied hereunder is apportioned.

"In the event the bottled soft drinks and soft drink syrups seized hereunder and sought to be sold upon forfeiture, summary sale, or other process provided by law do not have tax stamps or tax crowns affixed thereto, the officers selling the same, shall, upon sale thereof, affix or cause to be affixed, the tax stamps or tax crowns so required and deduct the expense thereof from the proceeds of such sale.

"The seizure, forfeiture and sale of bottled soft drinks and soft drink syrups and other property under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of such property from criminal prosecution for any act or

omission made or offense committed under this law or from liability to pay penalties provided by this law, with or without suit therefor.

"The term retail price or retail selling price as used in this Section shall mean the ordinary, customary price paid by the consumer for each taxable article sold at retail before the tax levied by this Section has been paid.

"15. Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Section, or any part thereof, provided that the offender shall first affix to each of the individual bottles or containers of soft drinks or soft drink syrups seized the amount and value of the tax stamps and tax crowns necessary to represent the tax, and in addition to the tax stamps and tax crowns required, pay into the State Treasury through the Comptroller a sum equal to the value of the tax stamps and tax crowns required to be affixed to such bottled soft drinks and soft drink syrups. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

"If upon examination of invoices or other investigation the Comptroller finds that bottled soft drinks or soft drink syrups have been sold without tax stamps or tax crowns affixed as required in this Section, he shall have the power to require of such person, to pay into the State Treasury through him a sum equal to twice the amount of the tax due. If upon examination of invoices or other investigation, such person is unable to furnish evidence to the Comptroller of sufficient tax stamp or tax crown purchases to cover the bottled soft drinks or soft drink syrups upon which tax stamps or tax crowns have not been affixed, purchased by him, the prima facie presumption shall arise that such products were sold without the proper tax stamps or tax crowns affixed thereto.

"16. Except as herein provided in this Section one-fourth ( $\frac{1}{4}$ ) of the net revenue derived from this Section shall be credited to the Available School Fund of the State of Texas

and three-fourths ( $\frac{3}{4}$ ) of the net revenue derived from this Section shall be credited to the Old Age Assistance Fund."

Provided that the tax herein levied shall be in lieu of any other occupation or excise tax levied by the State or any political subdivision thereof on bottled soft drinks or soft drink syrups.

"17. The Comptroller is hereby authorized, ordered and directed to collect, the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Section and to make necessary rules and regulations for the administration and enforcement of this Section. Provided, further, that five per cent (5%) of the gross amount of taxes, permits and license fees and other funds derived under the provisions of this Section shall be set aside in a special fund subject to the use of the Comptroller and so much of said fund as may be necessary shall be expended in the administration and enforcement of the provisions of this Section and said five per cent (5%) of such gross collections shall be and the same is hereby appropriated for said purposes, same to be paid monthly as needed.

"18. (a) Whoever shall distribute, sell, or offer for sale any bottled soft drink or soft drink syrup without the proper tax stamp or tax crown being then and there affixed to each individual container, or (b) whoever shall distribute or give away any bottled soft drink or soft drink syrup without the proper tax stamp or tax crown being affixed to each individual container, or (c) (d) whoever shall possess in violation of any provision of this Section any bottled soft drink or soft drink syrup without the proper tax stamp or tax crown being affixed to each individual container, or (e) whoever shall refuse to surrender upon demand of any authorized representative of the Comptroller any bottled soft drink or soft drink syrup possessed in violation of any provision of this Section, or (f) whoever shall sell any bottled soft drink or soft drink syrup without at the time of said sale having a valid permit, or (g) without having said valid permit posted so as to be easily seen by the public, or (h) whoever shall fail to deliver an invoice required by law to be delivered to a purchaser of bot-



tled soft drinks or soft drink syrup, or (i) whoever shall receive or accept delivery of bottled soft drinks or soft drink syrup without tax stamps or tax crowns affixed without at the time having in his possession the requisite amount or quantity of tax stamps or tax crowns to cover the tax levied on such products, or (j) knowingly transport any bottled soft drink or soft drink syrup without a tax stamp or tax crown being then and there affixed to each individual container, or (k) while transporting any bottled soft drink or soft drink syrup shall wilfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or (l) or refuse to permit a full and complete inspection by said authorized person of any vehicle or of premises where bottled soft drinks or soft drink syrups are manufactured, produced, made, mixed, compounded, stored, transported, sold or offered for sale or exchange, or (m) whoever shall destroy, mutilate or secrete any of the books and records required herein to be kept, or (n) shall refuse to permit the Comptroller, or the Attorney General of this State to inspect, examine or audit any books and records required herein to be kept, or any other records incident to the conduct of the bottled soft drink or soft drink syrup business that may be kept, or (o) whoever shall knowingly make any false entry or fail to make entries in the books and records required by the provisions of this Section to be kept, or (p) shall fail to keep for a period of two (2) years in Texas any books and records required herein to be kept, or (q) whoever shall fail to comply with any provision of this Section, or any rule and regulation promulgated by the Comptroller or shall violate the same, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) or by confinement in Jail for not more than six (6) months.

"19. (a) Whoever shall use, sell, offer for sale, or possess for the purpose or sale, any previously used stamps or crowns, or (b) attach or cause to be attached to any individual container of bottled soft drink or soft drink syrup, any previously used stamp or crown, or (c) use or con-

sent to the use of any previously used stamp or crown in connection with the sale or offering for sale of any bottled soft drink or soft drink syrup, or (d) whoever shall purchase tax stamps or tax crowns from any person other than the Treasurer of the State of Texas without then and there having a requisition from the Comptroller authorizing said purchase, or (e) whoever shall sell any tax stamps or tax crowns to any person other than the Treasurer of the State of Texas without then and there having a requisition from the Comptroller authorizing said sale, or (f) whoever shall knowingly make, deliver to and file with the Comptroller a false report, or an incomplete report, or (g) whoever shall knowingly fail to make and deliver to the Comptroller a report, as required by the provisions of this Section to be made, shall be guilty of a felony and shall be punished by confinement in the State Penitentiary for not more than five (5) years or by confinement in the County Jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.

"Provided that if any penalties prescribed in Subsection 18 of this Section overlap as to offenses which are also punishable under Subsection 19 of this Section, then the penalties prescribed by this Subsection shall apply and control all other penalties. Provided that the term "previously used tax stamp or tax crown" as used in this Section shall be construed to mean any tax stamp or tax crown which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on any bottled soft drink or soft drink syrup after said stamp or crown has, anterior to such use, sale or possession, been used on a previous or separate container of bottled soft drink or soft drink syrup, to evidence the payment of tax as aforesaid.

"20. Venue of a prosecution under the preceding subdivision shall be in Travis County, Texas, or in the county in Texas, where the offense occurred.

"21. Any person who shall print, engrave, make issue, sell or circulate, or

who shall possess, or have in his possession, with intent to use, sell, circulate or pass, any counterfeit tax stamp, or tax crown, or who shall use, or consent to the use of, any counterfeit tax stamp or tax crown in connection with the sale, of bottled soft drinks or soft drink syrup, or who shall place, or cause to be placed, on any individual container of bottled soft drink or soft drink syrup, any counterfeit tax stamp, or crown, shall be guilty of a felony and upon conviction, shall be punished by confinement in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

"22. Venue of a prosecution under the preceding Subsection shall be in Travis County, Texas.

"23. If any subsection, subdivision, sentence, clause, phrase, or word of this Section is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Section. The Legislature hereby declares that it would have passed this Section and each subsection, subdivision, sentence, clause, phrase, and word thereof irrespective of the fact that any one or more of the subsections, subdivisions, sentences, clauses, phrases, or words should be declared unconstitutional.

"Provided that this Section shall be effective on and after January 1, 1938."

Senator Moore moved the previous question on the amendment and passage of the bill to third reading, and the motion was duly seconded.

Senator Rawlings called for a division of the question.

The Senate refused to order the main question on the amendment at this time by the following vote:

## Yeas—7

Burns	Roberts
Moore	Small
Pace	Van Zandt
Redditt	

## Nays—21

Aikin	Head
Brownlee	Hill
Collie	Holbrook
Cotten	Isbell
Davis	Lemens

Nelson	Sulak
Newton	Weinert
Oneal	Westerfeld
Rawlings	Winfield
Spears	Woodruff
Stone	

## Present—Not Voting

Shivers

## Absent—Excused

Beck

Neal

Question recurring on the amendment, yeas and nays were demanded.

The amendment was lost by the following vote:

## Yeas—8

Burns	Pace
Collie	Redditt
Cotten	Shivers
Neal	Woodruff

## Nays—21

Aikin	Rawlings
Brownlee	Roberts
Head	Small
Hill	Spears
Holbrook	Stone
Isbell	Sulak
Lemens	Van Zandt
Moore	Weinert
Nelson	Westerfeld
Newton	Winfield
Oneal	

## Absent

Davis

## Absent—Excused

Beck

Senator Oneal offered the following amendment to the bill:

Amend Committee Substitute for House Bill No. 23 by adding immediately after subdivision (1) and before subdivision (2) of Section 2 of said bill a new subdivision to be numbered (1a) reading as follows:

"(1a) Provided the occupation tax levied herein upon oil produced from any marginal well which produces not more than five (5) barrels of oil per day and is not capable of producing more than five (5) barrels per day is two and three-fourths (2¾) cents per barrel of forty-two (42) standard gallons; and, provided further, however, that the occupation tax levied herein on oil produced from marginal wells making not

more than five (5) barrels per day is two and three-fourths (2¾) percent of the market value of said oil whenever the market value is in excess of one (\$1.00) dollar per barrel of forty-two (42) standard gallons. The daily production of each marginal well shall be computed by taking the aggregate monthly production and dividing by the number of days in that calendar month. The report of oil produced from each marginal well shall be made under oath at the end of each month and said report shall be presented to the Comptroller. The market value shall be determined as under subdivision (1) of this Section. If for any reason any court of competent jurisdiction shall finally hold this subsection unconstitutional, such unconstitutionality shall not affect the validity or the constitutionality of any other subsection, section or part of this bill; and in such event, the oil produced from such marginal wells shall be taxed under the provisions of subsection (1) of this section."

ONEAL,  
DAVIS.

Senator Moore raised a point of order on consideration of the amendment, on the ground that it violates the provision of the State Constitution requiring occupation taxes to be equal and uniform and also violates the Fourteenth Amendment to the Constitution of the United States.

The President overruled the point of order.

Senator Moore moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—14

Burns	Pace
Collie	Rawlings
Cotten	Redditt
Hill	Spears
Holbrook	Stone
Isbell	Weinert
Moore	Winfield

Nays 13

Aikin	Nelson
Brownlee	Oneal
Davis	Shivers
Head	Small
Lemens	Sulak

Van Zandt	Woodruff
Westerfeld	

Absent

Newton	Roberts
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Absent—Excused

Beck	Neal
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Leave of Absence Granted

On motion of Senator Newton, Senator Neal was granted leave of absence for the remainder of today on account of illness.

Senator Burns offered the following amendment to the bill:

Amend Committee Substitute for H. B. No. 23, by adding a new section to read as follows:

"(1) The term "Exchange" means any organization, association or group of persons, whether incorporated or unincorporated, which constitutes, maintains or provides a market place or facilities for bringing together purchasers and sellers of securities and commodities, or for otherwise performing with respect to securities and commodities the function commonly performed by a stock exchange or board of trade as those terms are generally understood, and includes the market place and the market facilities maintained by such exchange.

"(2) The term "Facility," when used with respect to an exchange, includes its premises, tangible or intangible property whether on the premises or not. Any right to the use of such premises or property, or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticket or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

"(3) The term "Member", when used with respect to exchange, means any person who is permitted either to effect transaction on the exchange without the services of another person acting as broker or to make use of the facilities of an exchange for transaction thereon without payment of a commission or fee or with the payment of a commission or fee which is less than that charged the general public, and includes any firm transacting a business as broker or dealer of

which a member is a partner, and any partner of such firm.

"4. The term "Broker" means any person engaged in the business of effecting transaction in securities and commodities for the account of others, but does not include a bank.

"(5) The term "Dealer" means any person engaged in the business of buying and selling securities and commodities for his own account through a broker or otherwise, but does not include a bank, or any person in so far as he buys and sells securities and commodities for his own account, either individually or in some fiduciary capacity, but not as a part of his regular business.

"(6) The term "Commodities" means cotton, grain, produce, metals and cotton seed oil.

"(7) The term "Securities" means any note, stock treasury note, bond, debenture, certificate of interest or participation in any profit sharing agreement, or in any oil, gas or other mineral royalty lease, any collateral-trust certificate, pre-organization certificate or subscription, transferable sale, investment contract, vote-trust certificate, certificate of deposit for a security, or in general any instrument commonly known as a "security."

"There is hereby levied and imposed upon each person, association or corporation doing business as a security or commodity broker as that term is herein defined an occupation or excise tax based upon the gross amount of commissions received by such person, association or corporation from the buying and selling of securities and commodities on any exchange either in this State or out of this State for the account of another at the rate of 3% of such gross amount of commissions received. Each person, association or corporation affected by the terms of this section shall make the reports and pay the tax herein levied in accordance with the provisions of Article 7058, Revised Civil Statutes of Texas, 1925, and all amendments thereto.

"(8) After one-fourth ( $\frac{1}{4}$ ) of the taxes collected hereunder have been placed to the credit of the Available School Fund, all other revenues derived herefrom shall be placed to the

credit of the Texas Old Age Assistance Fund."

BURNS,  
WOODRUFF.

Senator Moore moved the previous question on the amendment and the passage of the bill to third reading, and the motion was duly seconded.

Senator Rawlings called for a division of the question.

The Senate refused to order the main question on the amendment at this time by the following vote:

Yeas—8

Burns	Pace
Hill	Redditt
Moore	Small
Newton	Van Zandt

Nays—20

Aikin	ONeal
Brownlee	Rawlings
Collie	Shivers
Cotten	Spears
Davis	Stone
Head	Sulak
Holbrook	Weinert
Isbell	Westerfeld
Lemens	Winfield
Nelson	Woodruff

Absent

Roberts

Absent—Excused

Beck

Neal

Question recurring on the amendment, yeas and nays were demanded. The amendment was adopted by the following vote:

Yeas—18

Aikin	ONeal
Burns	Pace
Collie	Redditt
Cotten	Shivers
Hill	Spears
Isbell	Sulak
Lemens	Van Zandt
Moore	Westerfeld
Nelson	Woodruff

Nays—10

Brownlee	Roberts
Davis	Small
Holbrook	Stone
Newton	Weinert
Rawlings	Winfield

## Absent

Head

Absent—Excused

Beck

Neal

Senator Moore moved to reconsider the vote by which the amendment was adopted.

(Senator Roberts in the Chair.)

Senator Burns moved to table the motion to reconsider.

(President in the Chair.)

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

## Yeas—15

Aikin	Pace
Burns	Redditt
Collie	Shivers
Hill	Sulak
Isbell	Van Zandt
Lemens	Westerfeld
Nelson	Woodruff
Oneal	

## Nays—14

Brownlee	Rawlings
Cotten	Roberts
Davis	Small
Head	Spears
Holbrook	Stone
Moore	Weinert
Newton	Winfield

## Absent—Excused

Beck

Neal

Senator Nelson offered the following amendment to the bill:

Amend substitute for House Bill No. 23 by adding a new Section at the end of Section 5 to be known as Section 5-A and to read as follows:

"Section 5-A. That Section 2, Chapter 241, Acts of the Regular Session of the Forty-fourth Legislature, as amended by Chapter 495, House Bill No. 8, Acts of the Third Called Session of the Forty-fourth Legislature, and Chapter 6, Senate Bill No. 247, Acts of the Regular Session of the Forty-fifth Legislature, be and the same is hereby amended so as to read hereafter as follows:

"Sec. 2. A tax of Two Dollars (\$2.00) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Four Dol-

lars and Eighty Cents (\$4.80) per thousand on those weighing more than three (3) pounds per thousand is hereby imposed on all cigarettes sold, used, consumed or otherwise disposed of in this State for any purpose whatsoever. The said tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a "first sale" in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale. Payment of such tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Act; provided that such stamps may be purchased and affixed to such individual package of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required.

Provided, that the tax imposed shall be in lieu of any other occupation or excise tax imposed by the State or any political subdivision thereof, on cigarettes.

Cigarette stamps shall be sold by the Treasurer in unbroken sheets of one hundred (100) stamps only and shall be purchased from and sold only by said Treasurer, except as hereinafter provided. When the Comptroller deems it proper to accept the compromise provided for in Section 22, and the offender does not possess sufficient unused stamps to cover his unstamped stock of cigarettes, then and in that event the offender may purchase the required stamps from any distributor through a requisition from the Comptroller in order that his unstamped stock of cigarettes may be stamped immediately and under the direction of the Comptroller and the Comptroller shall have the authority to issue such requisition which shall be made in triplicate on a form prescribed by the Comptroller with the printed words

"Original," "Duplicate," and "Triplicate," on the respective sheets thereof. The original requisition shall be kept by the Comptroller and the duplicate and triplicate shall be delivered to the purchaser and seller of said stamps, respectively, who shall hold such copies of requisition at all times open to the inspection of the Comptroller and the Attorney General for a period of two (2) years. The Comptroller shall have the power and authority in the enforcement of this Act to recall any stamps which have been sold by said Treasurer and which have not been used and it shall be the duty of said Treasurer upon receipt of such recalled stamps to issue stamps of other serial numbers therefor. The purchaser of any stamps shall be required to surrender any unused stamps for exchange upon demand of said Comptroller.

"The Board of Control is hereby authorized to have the necessary design of cigarette tax stamps printed showing the increased tax as levied herein; provided that the expense of printing the cigarette tax stamps and any expense incurred by the Board incident thereto shall be paid from revenues derived from the cigarette tax before said tax is allocated to the funds to which it is apportioned.

"If any subsection, sentence, clause, phrase, term or word of this Section is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Section and the Legislature hereby declares that it would have passed each subsection, sentence, clause, phrase, term or word thereof irrespective of

the validity of the other portions of the Section or the Act. Provided further that all taxes, penalties and cost of audit accruing to the State prior to the effective date of this Section or Act are hereby expressly preserved and shall remain valid and binding obligations to the State of Texas; provided, further, that any criminal offenses committed or prosecutions begun under any law prior to the effective date of this Section or Act shall not be affected by the passage of this Section or Act but shall be conducted under the law as it existed at the time of the commission of the offense.

"This Section shall be effective on and after January 1, 1938."

Pending consideration of the amendment, Senator Redditt occupied the Chair temporarily.

(President in the Chair.)

Senator Van Zandt moved to table the amendment.

Yeas and nays were demanded and the motion to table was lost by the following vote:

Yeas—14

Brownlee	Small
Davis	Stone
Isbell	Sulak
Moore	Van Zandt
Pace	Weinert
Rawlings	Westerfeld
Roberts	Winfield

Nays—15

Aikin	Nelson
Burns	Newton
Collie	Oneal
Cotten	Redditt
Head	Shivers
Hill	Spears
Holbrook	Woodruff
Lemens	

Absent—Excused

Beck	Neal
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Question recurring on the amendment, yeas and nays were demanded.

The amendment was lost by the following vote:

Yeas—14

Aikin	Nelson
Burns	Newton
Collie	Oneal
Cotten	Redditt
Head	Shivers
Hill	Spears
Lemens	Woodruff

Nays—15

Brownlee	Small
Davis	Stone
Holbrook	Sulak
Isbell	Van Zandt
Moore	Weinert
Pace	Westerfeld
Rawlings	Winfield
Roberts	

Absent—Excused

Beck	Neal
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Senator Aikin offered the following amendment to the bill:

Amend C. S. H. B. No. 23, page 4, by striking out lines 57 and 58 and insert in lieu thereof the following:

One-half ( $\frac{1}{2}$ ) to the Available School Fund and

One-half ( $\frac{1}{2}$ ) to the Old Age Assistance Fund.

Senator Sulak offered the following substitute for the amendment:

Amend committee substitute for H. B. No. 23, by striking out lines 41 to 53 inclusive, on page 4, and insert in lieu thereof the following:

(b) One-fourth ( $\frac{1}{4}$ ) to the Texas Old Age Assistance Commission.

(c) One-fourth ( $\frac{1}{4}$ ) to the General Revenue Fund.

SULAK,  
HILL,  
NEWTON,  
ISELL.

(Senator Pace in the Chair temporarily.)

(President in the Chair.)

On motion of Senator Sulak, the amendment and the substitute were tabled subject to call.

Senator Sulak moved to reconsider the vote by which the amendment offered by Senator Nelson, increasing the tax on cigarettes, was lost.

The motion to reconsider was lost by the following vote:

#### Yeas—14

Aikin	Nelson
Burns	Oneal
Collie	Pace
Cotten	Redditt
Head	Shivers
Hill	Sulak
Lemens	Woodruff

#### Nays—15

Brownlee	Small
Davis	Spears
Holbrook	Stone
Isbell	Van Zandt
Moore	Weinert
Newton	Westerfeld
Rawlings	Winfield
Roberts	

#### Absent—Excused

Beck Neal

Senator Moore moved the previous question on the passage of the bill to third reading, and the motion was duly seconded.

Yeas and nays were demanded, and the Senate refused to order the main question at this time by the following vote:

#### Yeas—11

Burns	Redditt
Cotten	Roberts
Davis	Small
Head	Van Zandt
Moore	Winfield
Pace	

#### Nays—18

Aikin	Oneal
Brownlee	Rawlings
Collie	Shivers
Hill	Spears
Holbrook	Stone
Isbell	Sulak
Lemens	Weinert
Nelson	Westerfeld
Newton	Woodruff

#### Absent—Excused

Beck Neal

Senator Spears offered the following amendment to the bill:

Amend C. S. for H. B. No. 23 by adding a new section reading as follows:

"The total appropriation for each department as shown in Senate Bill No. 138, Acts of the Forty-fifth Legislature, Regular Session, for the biennium ending Aug. 31st, 1939, is reduced and amended to read as follows:

(1) For the year ending August 31, 1938—Total \$10,137,000.15.

(2) For the year ending August 31, 1939—Total \$9,242,771.32.

The several departments of the State government are hereby authorized and directed to readjust their budgets to conform with this reduction of 20%.

The sum of \$4,844,692.83, which represents the savings by virtue of this reduction, is allocated as follows:

One-half ( $\frac{1}{2}$ ) to the Texas Old Age Assistance Fund.

One-fourth ( $\frac{1}{4}$ ) to the Teachers Retirement Fund.

One-fourth ( $\frac{1}{4}$ ) to the General Revenue Fund.

Senator Burns raised a point of order on consideration of the amendment, on the ground that it is not germane to the bill and relates to a subject not submitted for consideration at the current called session of the Legislature.

The President sustained the point of order.

Senator Roberts appealed from the ruling of the President.

Senator Holbrook was called to the Chair pending the appeal.

Question—Shall the ruling of the President be sustained?

The Senate refused to sustain the ruling of the President by the following vote:

## Yeas—9

Burns	Oneal
Isbell	Sulak
Lemens	Van Zandt
Nelson	Woodruff
Newton	

## Nays—18

Aikin	Rawlings
Brownlee	Roberts
Collie	Shivers
Cotten	Small
Davis	Spears
Head	Stone
Holbrook	Weinert
Moore	Westerfeld
Pace	Winfield

## Absent

Hill	Redditt
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## Absent—Excused

Beck	Neal
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Senator Burns raised a further point of order on consideration of the amendment, on the ground that it purposes to amend a General Law by reference only.

The President overruled the point of order.

Senator Brownlee offered the following amendment to the amendment:

Amend the Spears amendment by adding thereto the following:

“Provided, however, that each of the heads of said departments are instructed not to reduce any salary which is now \$150.00 per month or less.”

The amendment to the amendment was adopted.

The amendment as amended was adopted.

Senator Sulak called from the table the amendment by Senator Aikin and the substitute by himself.

The President laid the amendment and substitute before the Senate.

Senator Sulak, by unanimous consent, withdrew the substitute.

Senator Sulak offered the following substitute for the amendment:

Amend C. S. for H. B. No. 23 by striking out all of lines 57 and 58 and insert in lieu thereof the following:

(a) One-fourth ( $\frac{1}{4}$ ) to Available School Fund.

(b) One-fourth ( $\frac{1}{4}$ ) to Old Age Assistance Fund.

(c) One-half ( $\frac{1}{2}$ ) to General Revenue Fund.

SULAK,  
HILL,  
NEWTON,  
ISEBELL.

Senator Small moved to table the substitute and the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

## Yeas—17

Brownlee	Redditt
Collie	Roberts
Davis	Shivers
Holbrook	Small
Moore	Stone
Nelson	Van Zandt
Oneal	Weinert
Pace	Winfield
Rawlings	

## Nays—12

Aikin	Lemens
Burns	Newton
Cotten	Spears
Head	Sulak
Hill	Westerfeld
Isbell	Woodruff

## Absent—Excused

Beck	Neal
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Senator Rawlings offered the following amendment to the bill:

Amend House Bill No. 23 by adding a new section thereto to read as follows:

“It is hereby expressly provided that all special fees and taxes levied and collected for enforcement and



administrative purposes, and heretofore allocated to the respective departments collecting said fees and taxes, shall be placed in the General Fund of the State Treasury as and when collected, and shall not be expended except by expressed authority of specific appropriations passed by the Legislature."

Senator Moore moved the previous question on the amendment and the passage of the bill to third reading.

Senator Collie called for a division of the question.

The main question was ordered on the amendment.

The main question was ordered on the passage of the bill to third reading by the following vote:

## Yeas—20

Brownlee	Roberts
Cotten	Shivers
Davis	Small
Head	Spears
Hill	Stone
Isbell	Van Zandt
Moore	Weinert
Newton	Westerfeld
Pace	Winfield
Redditt	Woodruff

## Nays—8

Aikin	Lemens
Burns	Nelson
Collie	Oneal
Holbrook	Sulak

## Present—Not Voting

Rawlings

## Absent—Excused

Beck Neal

Question first recurring on the amendment, it was adopted.

Senator Woodruff moved to reconsider the vote by which the main question was ordered on the passage of the bill to third reading.

The motion to reconsider was lost.

On motion of Senator Redditt, and by unanimous consent, it was ordered that the caption of the bill be amended to conform to the changes made in the body of the bill.

The bill then was passed to third reading.

### Committee Substitute for House Bill No. 23 on Third Reading

Senator Redditt moved that the constitutional rule requiring bills to be read on three several days be suspended and that Committee Substitute for H. B. No. 23 be placed on its third reading and final passage.

The motion prevailed by the following vote:

## Yeas—28

Aikin	Pace
Brownlee	Rawlings
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Davis	Small
Head	Spears
Hill	Stone
Isbell	Sulak
Lemens	Van Zandt
Moore	Weinert
Nelson	Westerfeld
Newton	Winfield
Oneal	Woodruff

## Nays—1

Holbrook

## Absent—Excused

Beck Neal

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time.

Senator Woodruff offered the following amendments to the bill:

## (1)

Amend Committee Substitute for House Bill No. 23 by adding a new section thereto to be known as Section 9 which shall read as follows:

Section 9. That Section 4, Article III, Chapter 495, Acts of the Third Called Session of the Forty-fourth Legislature, be and the same is hereby amended so as to read hereafter as follows:

Sec. 4. Subsection (1). The following words, terms and phrases as used in this Act are hereby defined as follows:

(a) The term "owner" as used herein shall mean and include any person, individual, firm, company, co-partnership, corporation, trustee, agency or receiver who owns, con-

trols or manages any "coin-operated machine" in this State and who leases or rents such machines to operators as herein defined or who places such machines on location or in the possession of operators or who permits such machines to be operated, exhibited or displayed by operators in this State on a percentage basis or by any other arrangements.

(b) The term "operator" as used herein shall mean and include any person, individual, firm, company, co-partnership, corporation, trustee, agency or receiver, who exhibits, displays or permits to be exhibited or displayed, in his or its place of business or upon premises under his or its control, any "coin-operated machine" in this State.

(c) The term "coin-operated machine" as used herein shall mean and include every machine or device of any kind or character which is operated by or with coins, or metal slugs, token or checks, "merchandise or music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(d) The term "merchandise or music coin-operated machine" as used herein shall mean and include every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending merchandise, commodities, confections or music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: candy machines, gum machines, sandwich machines, handkerchief machines, sanitary drinking cups, phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend merchandise, commodities, confections or music.

(e) The term "skill or pleasure coin-operated machines" as used herein shall mean and include every coin-operated machine of any kind or character whatsoever, when such machine or machines, dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively,

as those terms are defined herein. The following are expressly included within said term: marble machines, marble table machines, marble shooting machine, miniature race track machines, miniature football machines, miniature baseball machines, miniature golf machines, miniature bowling machines, and all other coin-operated machines which dispense or afford amusement, skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of amusement, skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(f) The term "service coin-operated machines" shall mean and include pay toilets, pay telephones and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

Subsection 2. Every "owner" as that term is herein defined shall pay and there is hereby levied on every "coin-operated machine" as defined in this Act, except such as are exempted herein, an annual occupation tax determined by the following schedule:

Series "1" (a) For each "merchandise or music coin-operated machine" as that term is hereinabove defined, a fee of Twenty Dollars (\$20.00), where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of Five (5) Cents, or represents a value in excess of Five (5) Cents.

And (b) a fee of Ten Dollars (\$10.00) where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of One (1) Cent and not exceeding Five (5) Cents or represents a value in excess of One (1) Cent and not exceeding Five (5) Cents.

Series "2" (a) For each "skill or pleasure coin-operated machine" as that term is hereinabove defined, a fee of Sixty Dollars (\$60.00) where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of Five (5) Cents, or represents a value in excess of Five (5) Cents.

And (b) a fee of Thirty Dollars

(\$30.00) where the coin, fee or token used, or which may be used, in the operation thereof, is one of the value in excess of One (1) Cent and not exceeding Five (5) Cents or represents a value in excess of One (1) Cent and not exceeding Five (5) Cents.

Provided that nothing herein shall prevent the "operator" of such machines from paying the tax levied in this Act for the account of the "owner" but the payment of such tax by such "operator" or other person shall not relieve the owner from the responsibility of complying with all provisions of this Act including the keeping of the records required herein.

Subsection 3. Gas meters, pay telephones, and cigarette vending machines used for selling cigarettes only, which are now subject to an occupation or a gross receipts tax and "service coin-operated machines" as that term is defined, are expressly exempt from the tax levied herein and the other provisions of this Section.

Subsection 4. (a) Any person who shall invoke the power and remedies of injunction against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin him from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(b) Before any restraining order or injunction shall be granted against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin the collection of the taxes levied herein the applicant therefore shall pay into the suspense account of the State Treasury all taxes, fees and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the Comptroller of Public Accounts of this State or their authorized representatives, a well bound book record, showing all coin-operated vending machines possessed and in operation during the pend-

ency of such restraining order or injunction. Such book record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the Comptroller of Public Accounts daily, excluding Sundays and legal holidays, a report on a form to be prescribed by said Comptroller, showing the ownership, make, and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed, such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the Court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The Comptroller of Public Accounts of this State, or his authorized representatives, may file in the Court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Act or has violated the same. Upon the filing of said affidavit, the Clerk of said Court shall issue notice to the said applicant to appear before such Court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the Court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the Sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed all taxes, fees and assessments, paid

into the suspense account of the Treasurer under the provisions of this Act shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the Comptroller of Public Accounts, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the Comptroller of Public Accounts all taxes, fees and assessments due by him under the provisions of this Act and said restraining order or injunction shall, in no way, interfere with or impair the power of the Comptroller of Public Accounts of this State to collect and enforce the payment of the taxes, fees and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided, further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as hereinbefore provided.

Subsection 5. (a) For the purpose of enabling the Comptroller to determine the tax liability of the owners of coin-operated machines in this State, or whether a tax liability has incurred, every individual, company, person, firm, co-partnership, corporation, trustee, agency and/or receiver who owns, controls or permits to be operated or displayed any coin-operated machine in this State shall have a separate and different serial number stamped by indenture into the stationary wood or metal of each machine in a manner that such serial number cannot be removed or transferred to another machine, and such

serial number shall be shown on the application for a tax receipt and on the tax receipt issued. If any person shall indent the same serial number on more than one machine or shall exhibit, display or have in his possession within this State any coin-operated machine with the tax receipt of the Comptroller attached thereto and bearing the wrong serial number or a tax receipt bearing a different serial number from the serial number stamped by indenture on such machines, he shall be guilty of a misdemeanor and punished as set out in Subsection 13 of this Section. The possession, exhibition or display of more than one machine bearing the same serial number operated under the same management or ownership, shall be prima facie evidence that the owner of such machines indented the same serial number on each machine for the purpose of evading payment of the tax levied herein.

(b) Provided, further, the tax receipt issued by the Comptroller to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same.

Subsection 6. (a) The Comptroller of Public Accounts shall have the authority to make and publish rules and regulations, not inconsistent with this Act or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Act and the collection of the revenues hereunder.

(b) If any owner as defined herein shall violate any provision of this Act or any rule and regulation promulgated by the Comptroller for the enforcement of this Act, the Comptroller shall have the power and is hereby authorized to refuse to issue tax receipts to such offender for a period of one (1) year.

It shall be unlawful for any operator as defined herein to operate, exhibit or display for operation any coin-operated machine without a tax receipt affixed thereto, or to operate, exhibit, display or permit to be operated or displayed in his place of business or upon premises under his control any coin-operated machine with-

out a serial number indented into the stationary metal or wood of such machine.

Subsection 7. Every coin-operated machine on which taxes are imposed by this Act, which shall be found in the possession, or custody or within the control of any person, firm, company, association or corporation, subject to this Act, for the purpose of being exhibited, displayed or being played by the public, without having affixed thereto, in the manner hereinafter required, the proper tax receipt issued by the Comptroller to evidence the payment of the tax hereby levied, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture, as herein provided. All such coin-operated machines, so seized as aforesaid, remaining in the possession or custody of the Comptroller, Sheriff or other officer, for forfeiture or other disposition, as provided by law, shall be deemed to be, in the custody of law, an irreplevable.

The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisal thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General, or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and Court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner, or person in possession, as defendant, if known, and if unknown, then in the name of said property seized and sought to be

forfeited. Upon the filing of said proceeding, the Clerk of said Court shall issue notice to the owner or person in possession of such property to appear before such Court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a non-resident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon non-residents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the Court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing Statutes in cases of attorneys appointed to represent non-residents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the Court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and court costs, shall be paid into the State Treasury, and shall be allocated as the Coin-operated Machine Tax is herein allocated. In the event the district or county attorneys file and prosecute such cases, a fee of Fifteen Dollars (\$15.00) shall be paid to such officers in addition to all other fees allowed by law under any maximum fee bill, which fee shall be collected as court costs out of the proceeds of such sale.

In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the coin-operated machine or machines seized by him in cases where such property appears by the report or receipt of the officer seizing

same to be of the appraised value of Five Hundred Dollars (\$500.00), or less, by the following summary proceedings:

(a) The Comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(b) Any person claiming such property so seized, or any interest therein or thereto, within the time specified in such notice may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250.00), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller, he shall transmit the same with a certified copy of the report or receipt of the property seized, filed in his office, to the Attorney General or the county or district attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction, as provided by law.

(c) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and, after deducting expense of seizure, appraisal, custody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the Coin-operated Machine Tax levied hereunder is apportioned.

(d) The seizure, forfeiture and sale of a coin-operated machine or machines under the terms and conditions hereinabove set out, and whether with or without court action, shall

not be or constitute any defense or exemption to the person owning, operating or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this law or from liability to pay penalties provided by this law, with or without suit therefor.

(e) Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Act, or any part thereof, provided that the offender shall first affix to the coin-operated machine or machines a proper tax receipt issued by the Comptroller and in addition thereto pay into the State Treasury through the Comptroller a sum equal to the amount of the tax required to be paid. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

Subsection 8. Provided that the Comptroller of Public Accounts, or his authorized representatives, shall be empowered and are hereby authorized to seal in a manner that will prevent further operation any coin-operated machine being operated, exhibited or displayed for operation in this State without a proper tax receipt affixed to said coin-operated machine, or any coin-operated machine being operated, exhibited, or displayed for operation in this State in violation of any provision of this Act or any reasonable rule and regulation promulgated by the said Comptroller for the enforcement of this Act. The said seal shall not be broken or removed by the Comptroller or his representatives until the said tax has been paid and a tax receipt affixed to the coin-operated machine sealed or until the owner or operator of such coin-operated machine has otherwise purged himself of all such violations. The receipt wherever used in this Act shall be construed to mean the regular form tax receipt issued by the Comptroller and shall not be construed to mean temporary receipts issued by representatives of the Comptroller. Such temporary receipts shall not be affixed to coin-operated machines.

Subsection 9. Nothing herein shall be construed or have the effect to

license, permit, authorize, or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State.

Subsection 10. Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and Comptroller of Public Accounts of this State, or their authorized representatives, a complete book record in a well bound book of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for the tax receipt and shall include the following information: The make, kind and serial number of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine by serial number, including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator together with the serial numbers of the machines operated by such operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine.

Subsection 11. All taxes and penalties as provided herein, due, or that might become due by any coin-operated machine owner in this State shall be and become a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property of such coin-operated machine owner devoted to or used in his coin-operated machine business which property shall include all coin-operated machines, tools, equipment, trucks, cars or motor vehicles or any other property or equipment devoted to such use, including cash and other tangible property which is used in carrying on such business. If any owner of coin-operated machines shall fail to pay any taxes and penalties

due the State, in the proper manner provided for such payment or fail to keep complete records as required herein, the Comptroller may assign auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly paid the said coin-operated machine owner shall pay the reasonable expenses incurred in such investigation and audit as additional penalty.

Subsection 12. If any "owner" of a coin-operated machine within this State shall (a) deliver to or permit to be delivered to any "operator" a coin-operated machine without a valid tax receipt issued by the Comptroller of Public Accounts of this State being attached thereto, or (b) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said tax receipt being attached thereto, or (c) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a tax receipt issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (d) shall exhibit, display or have in his possession in this State any coin-operated machine without a serial number stamped by indenture into the wood or metal of said coin-operated machine, or (e) if any person shall exhibit, display or possess any coin-operated machine in this State with a tax receipt attached thereto and bearing a different serial number from the serial number stamped by indenture on the machine to which said tax receipt is attached, or (f) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (g) shall fail to keep such records, or (h) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (i) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Act, or (j) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Act, or (k) if any person in this State shall fail to comply with the provisions of this Act, or violate the same, or (l) if any

person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.

Subsection 13. (a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid tax receipt issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (b) shall exhibit, display or have in his possession in this State any coin-operated machine without a serial number stamped by indenture into the wood or metal of said coin-operated machine, or (c) if any person shall exhibit, display or possess any coin-operated machine in this State with a tax receipt attached thereto bearing a different serial number from the serial number stamped by indenture on the machine to which said tax receipt is attached, or (d) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (e) shall fail to keep such records, or (f) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (g) if any person shall break any seal affixed to a coin-operated machine by the Comptroller or his authorized representatives, or (h) shall exhibit or display any such coin-operated machine after said seal has been broken or shall permit to be exhibited or displayed in his place of business or upon any premises under his control any coin-operated machine after said seal has been broken, or (i) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Act, or (j) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Act, or (k) if any person in this State

shall fail to comply with the provisions of this Act, or violate the same, or (l) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00).

Subsection 14. The Comptroller of Public Accounts of this State is hereby authorized, ordered and directed to collect, and issue tax receipts for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Act. Provided further, that Ten Thousand Dollars (\$10,000.00) of the funds derived under the provisions of this Section or Act shall be set aside annually in a special fund subject to the use of the Comptroller and so much of said fund as may be necessary shall be expended for the printing of applications, tax receipts and for the administration and enforcement of the provisions of this Section or Act and so much of the proceeds of said fund shall be and the same is hereby appropriated for said purposes, same to be paid as needed.

Subsection 15. Except as herein provided in this Act, one-fourth ( $\frac{1}{4}$ ) of the net revenue derived from this Section shall be credited to the Available School Fund of the State of Texas and three-fourths ( $\frac{3}{4}$ ) of the net revenue derived from this Section shall be credited to the Old Age Assistance Fund of this State. Provided that all counties and cities within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one-half ( $\frac{1}{2}$ ) of the State tax levied herein.

Subsection 16. If any subsection, sentence, clause, phrase or word of this Section is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Section and the Legislature hereby declares that it would have passed each subsection, sentence, clause, phrase or word thereof irrespective of the validity of the other portions of the Section. Provided further that all taxes, penalties and audit costs



accruing to the State prior to this amendment are hereby expressly preserved and shall remain valid and binding obligations to the State of Texas; provided further that any criminal offenses committed or prosecutions begun under any law prior to this amendment shall not be affected by the said amendment but shall be conducted under the law as it existed at the time of the commission of the offense.

(2)

Amend Committee Substitute for House Bill No. 23 by adding new Section to be known as Section 6-A which shall read as follows:

Section 6-A. That Section 9, Chapter 241, Acts of the Regular Session, Forty-fourth Legislature, page 575, as amended by Chapter 495, House Bill No. 8, Acts of the Third Called Session of the Forty-fourth Legislature, and as amended by Chapter 6, Senate Bill No. 247, Acts of the Regular Session of the Forty-fifth Legislature, be and the same is hereby amended so as to read hereafter as follows:

Sec. 9. (a) Every distributor shall make and deliver to the Comptroller in Austin, Travis County, Texas, on the 10th day of each month a report for the preceding calendar month, which report shall be properly sworn to and executed by the distributor, or his representative in charge, and which shall show the date said report was executed, the name and address of said distributor, the month which the report covers, the number of unstamped and the number of stamped cigarettes on hand at the beginning of the month, the number of unstamped and the number of stamped cigarettes purchased and received during the month, the number of unstamped and the number of stamped cigarettes returned from customers or received from any other source, the number of unstamped and the number of stamped cigarettes sold, used, lost, stolen, returned to the factory or disposed of in any other manner, and the number of unstamped and the number of stamped cigarettes on hand at the end of the month. Said report shall show separately the number of cigarettes sold or distributed in intrastate commerce and the number sold or distributed in interstate commerce. Said report shall also show the number, denomi-

nation and face value of unused stamps on hand at the beginning of the month covered in the report, the number, denomination and face value of stamps purchased and received, the number, denomination and face value of stamps sold, used, lost, stolen, exchanged, returned to the Treasurer, or disposed of in any other manner and the number, denomination and face value of stamps on hand at the end of the month covered in the report. Provided, that said report shall also show separately all drop-shipments handled by or through said distributor during the period reported which information shall include the date of shipment, the invoice number, the name and address of the consignee, the number and brand of such cigarettes and the means of delivery and a copy or copies of all invoices of such drop-shipments shall be attached to and sent with said report. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up in said report but the failure of any distributor to obtain such form from the Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein.

(b) If any distributor or other person fails to pay any tax, penalties and cost of audit owing under the provisions of this Act or any pre-existing laws levying a tax on cigarettes, then, in the trial of any suit, whether the same is now pending for trial or has not yet been instituted, or in any intervention for the establishment or collection of said tax claim, in any judicial proceedings, any report filed with the Comptroller by such distributor or other person or any report filed by a representative of such distributor or other person, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the number of cigarettes sold by such distributor or other person or the number of cigarettes sold by the representatives of such distributor or other person, upon which such tax, penalty and cost of audit has not been paid, or any audit made by the Comptroller or any of his representatives when signed and sworn to by such representative as being made from the records of any distributor or other

person, or from the records of persons from whom or to whom such distributor or other person has bought, received, or delivered cigarettes, whether from the records of a transportation company or other persons handling cigarettes in any manner, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof and the burden of proof shall be upon the distributor or other person to show that such audit or report or any part of such audit or report is incorrect.

(c) Provided that if any audit or tax claim which has been signed and sworn to by the Comptroller or his representatives in the manner provided in the foregoing subsection, shows that cigarettes have been delivered to any distributor or other person or that cigarettes have been received by any such distributor or other person, then, unless such distributor or other person can furnish evidence to the Comptroller that sufficient cigarette tax stamps have been purchased to cover the tax imposed on said cigarettes or that said cigarettes had the proper and requisite amount or number of cigarette tax stamps affixed to each individual package when such cigarettes were received, the said audit or tax claim shall be taken as prima facie evidence that such cigarettes were sold without stamps affixed and without the cigarette tax having been paid to the State as required by law.

(d) If any subsection, sentence, clause, phrase or word of this Section is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Section and the Legislature hereby declares that it would have passed each subsection, sentence, clause, phrase or word thereof irrespective of the validity of the other portions of the Section. Provided further that all taxes, penalties, and audit costs accruing to the State prior to this amendment are hereby expressly preserved and shall remain valid and binding obligations to the State of Texas; provided further that any criminal offenses committed or prosecutions begun under any law prior to this amendment shall not be affected by the said amendment but shall be conducted

under the law as it existed at the time of the commission of the offense.

Senator Redditt moved the previous question on the amendments and the passage of the bill to third reading, and the main question was ordered.

Question first recurring on the amendment (1), yeas and nays were demanded.

The amendment (1), was adopted by the following vote:

## Yeas—20

Brownlee	Newton
Cotten	Oneal
Davis	Pace
Head	Redditt
Hill	Roberts
Holbrook	Shivers
Isbell	Van Zandt
Lemens	Westerfeld
Moore	Winfield
Nelson	Woodruff

## Nays—6

Aikin	Small
Burns	Sulak
Collie	Weinert

## Present—Not Voting

Rawlings	Stone
Spears	

## Absent—Excused

Beck	Neal
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Question next recurring on the amendment (2), yeas and nays were demanded.

The amendment (2) was lost by the following vote (not receiving the necessary two-thirds vote):

## Yeas—13

Brownlee	Redditt
Davis	Sulak
Isbell	Van Zandt
Lemens	Westerfeld
Nelson	Winfield
Newton	Woodruff
Oneal	

## Nays—12

Aikin	Holbrook
Burns	Moore
Collie	Pace
Cotten	Roberts
Head	Shivers
Hill	Weinert

## Present—Not Voting

Rawlings	Spears
Small	Stone

## Absent—Excused

Beck	Neal
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Question then recurring on the passage of the bill, yeas and nays were demanded.

The bill was passed by the following vote:

## Yeas—22

Aikin	Oneal
Burns	Pace
Collie	Redditt
Cotten	Roberts
Davis	Shivers
Head	Spears
Hill	Sulak
Isbell	Van Zandt
Moore	Westerfeld
Nelson	Winfield
Newton	Woodruff

## Nays—7

Brownlee	Small
Holbrook	Stone
Lemens	Weinert
Rawlings	

## Absent—Excused

Beck	Neal
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## Message From the House

A Clerk from the House was recognized to present the following messages:

Hall of the House of Representatives,  
Austin, Texas,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills and resolutions:

H. B. No. 141, A bill to be entitled "An Act to amend House Bill No. 463, Acts of the Forty-fifth Legislature of Texas, Regular Session, 1937, by amending Section 7 (a) thereof so as to provide that all eligible obligations on or after January 1, 1938, shall participate in the funds on hand and coming into the County and Road District Highway Fund to the extent of the total amount thereof expended upon State highways less

the amount thereof theretofore paid by the State of Texas out of such funds; expressly repealing Senate Bill No. 450, Acts of the Forty-fifth Legislature of Texas, Regular Session, 1937; providing that this Act shall take effect on January 1, 1938; repealing all laws in conflict herewith, and declaring an emergency."

H. B. No. 146, A bill to be entitled "An Act authorizing the Director of the Cigarette Tax Division of the State Comptroller's Department to designate a personal representative as supervisor of the printing and manufacturing of cigarette tax stamps; relieving the Director of the Cigarette Tax Division of the burdens of the personal supervision imposed by Section 30 of House Bill No. 755, Acts, Forty-fourth Legislature; authorizing the designation by the Director of the Cigarette Tax Division to the Stamp Tax Board of a personal representative of the Director; the employment of such representative by the Stamp Tax Board; and providing for the payment of services to be rendered by such personal representative, and declaring an emergency."

H. B. No. 148, A bill to be entitled "An Act amending Section 19 (f) of Article 3912e, and being Acts of the Second Called Session of the Forty-fourth Legislature, Chapter 465, page 1762, to make adequate provision for the compensation of Court Reporters appointed by the District or Criminal District Attorney in any county having a population in excess of one hundred ninety thousand (190,000), according to the last preceding Federal Census, and declaring an emergency."

H. B. No. 149, A bill to be entitled "An Act applicable in the counties of Mason, Menard, Kerr, Schleicher, Crockett, Sutton, Kimble, Real, Edwards, Blanco, Llano, Kendall, Gillespie, El Paso, Hudspeth, Culberson, Val Verde, Kinney, Maverick, Terrell, Brewster and Burnet of the State of Texas, requiring a hunting license of any resident citizen of the State of Texas hunting in any of said counties with certain exemptions; requiring a fishing license of all persons residing in the State of Texas and fishing in said counties or in any stream forming a part of the boundary line of any of said counties and for such distance of such stream forms a part

of the boundary of any of the aforementioned counties; etc., and declaring an emergency."

H. B. No. 159, A bill to be entitled "An Act authorizing the Old Age Assistance Commission to pay interest on warrants issued against the Texas Old Age Assistance Fund; making an appropriation therefor; restricting the total amount to be paid on account of any warrant issued for a given month; prescribing the powers and duties of certain State officials in reference thereto; prescribing the maximum rate of interest to be paid; providing that the authority conferred in this Act shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature; making available appropriation made in Chapter 472 of the Acts of the Second Called Session of the Forty-fourth Legislature for the purposes of this Act until the appropriation made in House Bill No. 23 of this Second Called Session of the Forty-fifth Legislature becomes available, and re-appropriating any unexpended balances of said appropriation for the fiscal year ending August 31, 1939, and limiting the amount of warrants to be issued hereunder to not more than Three Million (\$3,000,000.00) Dollars and further providing that no such warrants on which interest is to be paid shall be issued after March 1, 1938; making this Act cumulative of other laws but providing that it shall take precedence over any law in conflict herewith, and declaring an emergency."

H. B. No. 161, A bill to be entitled "An Act to validate elections held to elect seven trustees in independent school districts created by special Act providing for a board of five trustees in such district; providing that the Board of Trustees elected at such elections is hereby constituted the Board of Trustees for such districts; providing that such districts shall hereafter elect seven trustees in accordance with the provisions of the General Law governing the election of seven trustees in independent school districts, under which they are now acting; validating bonds voted by such district but not yet issued and all bonds issued by such districts and now outstanding; etc., and declaring an emergency."

S. B. No. 29, A bill to be entitled "An Act to validate, ratify, approve, confirm, and declare enforceable, all levies and assessments of ad valorem taxes heretofore made by incorporated cities and towns in the State of Texas because the same were made and adopted by resolution, motion, or other informal action, and because of the failure of the governing body of such city and town to appoint the proper and statutory board of equalization; etc., and declaring an emergency."

S. B. No. 13, A bill to be entitled "An Act amending Article 6077-C of the Revised Civil Statutes of the State of Texas (Acts 1933, Forty-third Legislature, First Called Session, Page 275, Chapter 110) by clarifying and enlarging the description in Section 4 and adding Section 5-A, to remove the additional public school lands from sale and lease, and Section 6-A providing for the management of public donations by the Texas State Parks Board to acquire acreage within the area, and giving the Board the power to condemn such lands and use the public funds for the purchase of such lands for park purposes, and declaring an emergency."

(With amendments)

S. B. No. 11, A bill to be entitled "An Act validating Independent School District elections assuming indebtedness theretofore apportioned against such districts or a part thereof as a result of its segregation from another Independent School District whether the indebtedness so assumed be the identical proportionate part of the indebtedness owed by the original district at the time of its segregation or an equal amount of indebtedness incurred by a portion of the original district after such segregation; declaring the indebtedness thus assumed to be indebtedness of such district; imposing duty upon the governing boards of districts assuming such indebtedness to levy and collect taxes to pay principal and interest; validating proceedings heretofore had for the issuance of bonds to refund indebtedness so assumed; declaring that such refunding bonds when issued, approved by the Attorney General, and registered by the Comptroller, shall constitute legal and binding obligations of the district; providing that

this Act shall not affect any litigation pending at the time the Act becomes effective; authorizing the issuance by certain school districts of interest bearing time warrants for the purpose of paying expenses incident to refunding outstanding bonds; and declaring an emergency."

(With amendment)

H. B. No. 155, A bill to be entitled "An Act amending Section 1, Chapter 39, Acts of the Second Called Session of the Forty-third Legislature, as amended by House Bill No. 1016, Acts of the Regular Session of the Forty-fifth Legislature, and declaring an emergency."

H. B. No. 163, A bill to be entitled "An Act providing the time when mourning doves and white winged doves may be shot in Collin, Dallas, Delta, Denton, Franklin, Haskell, Hopkins, Hunt, Jack, Johnson, Kaufman, Montague, Parker, Rockwall, and Wise Counties making certain exceptions; fixing the bag limit and possession limit of same; fixing the hours for shooting and making regulations for shotguns that may be used for shooting migratory birds and other game birds; providing a penalty for the violation of any such regulations; repealing all laws in conflict with any Section of this Act; and declaring an emergency."

H. B. No. 167, A bill to be entitled "An Act to amend Chapter 57 of the Acts of the Forty-first Legislature, Regular Session, by amending Section 13 thereof so as to authorize and empower the Commissioners' Court of Montgomery County, Texas, to issue warrants or other evidence of indebtedness against the road and bridge fund of said County for the purpose of acquiring land for right of way purposes for State or Federal designated highways and public roads; limiting and restricting such power; authorizing and regulating the issuance of interest-bearing time warrants of said County for the purpose of taking up and paying off of any such road and bridge warrants; repealing all laws in conflict; and declaring an emergency."

H. B. No. 129, A bill to be entitled "An Act to amend Article 5559, Title 92, of the Revised Civil Statutes of

Texas, 1925, relating to record of proceedings and notice in lunacy proceedings, so as to provide that the County Clerk shall be required to enter in the minutes of the Court only the judgments of the Court rendered in lunacy proceedings; providing for the commitment and confinement of insane persons, and the manner thereof; the furnishing of a transcript of the proceedings relating thereto; repealing all laws and parts of laws in conflict herewith; and declaring an emergency."

H. B. No. 164, A bill to be entitled "An Act to amend House Bill No. 52, Chapter 18, Acts of the Forty-third Legislature, Fourth Called Session, so as to provide that the governing body of any city, or town having a population of twelve thousand, four hundred and ten (12,410) inhabitants or less, according to the last preceding Federal Census, and owning and operating its municipal waterworks system and municipal light system in this State, in making up the annual appropriations of the income and revenue of waterworks system, electric lights system, etc., shall first provide for maintenance and operating expenses; . . . etc., and declaring an emergency."

H. C. R. No. 49, Declaring the Legislative intent in enacting the bill providing for the maximum compensation for county treasurers in S. B. No. 5, passed at the Second Called Session, Forty-fourth Legislature.

H. C. R. No. 29, Granting the Tyler Pipe Line Company permission to sue the State of Texas.

H. C. R. No. 44, Granting Russ Mitchell, Incorporated, permission to sue the State.

S. C. R. No. 4, Granting Mr. and Mrs. B. K. Brewer permission to sue the State of Texas and/or the State Highway Department of Texas for property damages.

S. C. R. No. 7, Granting Mrs. John Luttmner permission to sue the State of Texas and the State Highway Commission of Texas for personal injuries.

H. C. R. No. 31, Granting permission to Martin Brothers, General Contractors, to sue the State of Texas for property damages.

Respectfully submitted,

LOUISE SNOW PHINNEY,  
Chief Clerk, House of Representatives.

#### House Bills on First Reading

The following bills, received from the House today, were laid before the Senate, read first time and referred to the committees indicated:

H. B. No. 133, to Committee on Finance.

H. B. No. 146, to Committee on Finance.

H. B. No. 141, to Committee on Finance.

H. B. No. 148, to Committee on Counties and County Boundaries.

H. B. No. 149, to Committee on Game and Fish.

H. B. No. 155, to Committee on Civil Jurisprudence.

H. B. No. 159, to Committee on Finance.

H. B. No. 161, to Committee on Civil Jurisprudence.

H. B. No. 167, to Committee on Civil Jurisprudence.

H. B. No. 163, to Committee on Game and Fish.

#### House Concurrent Resolution Referred

The following resolution, received from the House today, was read and referred to the committee indicated:

H. C. R. No. 31, to the Committee on State Affairs.

#### Senate Bill No. 13 With House Amendments

Senator Winfield called up Senate Bill No. 13 from the President's table, for consideration of the House amendments to the bill.

The President laid the bill before the Senate and the House amendments were read.

Senator Winfield moved that the Senate concur in the House amendments.

The motion prevailed by the following vote:

Yeas—29

Aikin	Pace
Brownlee	Rawlings
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Davis	Small
Head	Spears
Hill	Stone
Holbrook	Sulak
Isbell	Van Zandt
Lemens	Weinert
Moore	Westerfeld
Nelson	Winfield
Newton	Woodruff
Oneal	

Absent—Excused

Beck Neal

#### Senate Bill No. 9 With House Amendments

Senator Hill called up Senate Bill No. 9 from the President's table, for consideration of the House amendments to the bill.

The President laid the bill before the Senate, and the House amendments were read.

Senator Hill moved that the Senate concur in the House amendments.

The motion prevailed by the following vote:

Yeas—29

Aikin	Pace
Brownlee	Rawlings
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Davis	Small
Head	Spears
Hill	Stone
Holbrook	Sulak
Isbell	Van Zandt
Lemens	Weinert
Moore	Westerfeld
Nelson	Winfield
Newton	Woodruff
Oneal	

Absent—Excused

Beck Neal

#### Bills and Resolution Signed

The President signed, in the presence of the Senate, after giving due notice thereof, and their captions had been read, the following enrolled bills and resolutions:

S. B. No. 29, "An Act to validate, ratify, approve, confirm, and declare enforceable, all levies and assessments of ad valorem taxes heretofore made by incorporated cities and towns in the State of Texas because the same were made and adopted by resolution, motion or other informal action, and because of the failure of the governing body of such city and town to appoint the proper and statutory Board of Equalization; and which are insufficient and voidable, or unenforceable on account of technical irregularities in the manner of preparing the books and reports of assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Boards of Equalization acting for any such city or town, which are irregular or insufficient because the reports of such equalizations were adopted and accepted orally, or by other informal action; and the acts of making such equalizations were made orally or by other informal action; or in incomplete form; and because of the failure of the governing body or any officer of such city or town to prepare, have public hearings on, and file a budget; and providing further that this Act shall apply only to those incorporated cities and towns in this State having a population of not less than twelve hundred forty-five (1,245) and not more than twelve hundred fifty-five (1,255), according to the last preceding Federal census; providing this Act shall not affect suits pending at the time same becomes effective; and declaring an emergency."

H. B. No. 49, "An Act empowering and authorizing cities and towns in the State of Texas having a population in excess of 230,000 and not more than 250,000, according to the last preceding or any future Federal Census, to enact ordinances authorizing City and Town Assessors, or Assessors and Collectors to prescribe such assessment forms, lists, or statements for rendering property as will also serve as a tax roll without the necessity of recompiling such tax roll from the original assessment roll; authorizing the binding of such assessment, forms, lists or statements and combination tax roll, regardless of whether rendered or unrendered, into one roll in alphabetical order, providing a

saving clause, and declaring an emergency."

H. B. No. 98, "An Act amending Section 12 of Chapter 59, of the Acts of the Thirty-ninth Legislature, so as to provide that in certain counties having a population according to the last preceding Federal Census of not less than eight thousand five hundred (8,500) and not more than eight thousand seven hundred (8,700) Rural High School Districts formed by the grouping of common school districts shall not have the authority to appoint a tax assessor, board of equalization nor tax collector, providing for an emergency."

H. B. No. 143, "An Act permitting the city council of any city or town in this State and the trustees of independent school districts to fix the compensation of the tax assessors and collectors in said cities, towns, and independent school districts in counties with the population of not less than 43,030 and not more than 43,040, according to the last Federal Census, and declaring an emergency."

H. B. No. 107, "An Act to declare a closed season on the killing of quail in Haskell County for a period ending February 1, 1940, prescribing a penalty, and declaring an emergency."

H. B. No. 108, "An Act repealing House Bill No. 246, Acts of the Forty-fifth Legislature, Regular Session, 1937, and declaring an emergency."

H. B. No. 114, "An Act amending Article 880 of the Penal Code of the State of Texas making it lawful to use a dog in the hunting of or pursuing of or taking of any deer in Tyler County."

H. B. No. 116, "An Act providing that a County Auditor may be appointed in any county having a population of not less than twenty thousand one hundred (20,100) nor more than twenty thousand one hundred and fifty (20,150) according to the last preceding Federal Census and having a taxable value of less than Fifteen Million (\$15,000,000.00) Dollars, according to the last approved tax roll; providing that Commissioners' Court in such county may by order determine the necessity for such office as well as by order may discon-

tinue such office; providing compensation and the fund from which it shall be paid, and declaring an emergency."

H. B. No. 123, "An Act amending Section I of House Bill No. 659, Acts of the Forty-fifth Legislature, Regular Session, and declaring an emergency."

H. B. No. 126, "An Act requiring any person using any trap or similar device to take any of the birds or animals of this State, upon the private lands of another person in Van Zandt County, to first obtain and have in his possession a written permit; providing other necessary regulations pertaining to the obtaining of such permit; providing that the failure to have in possession such valid permit shall be prima facie evidence of guilt; providing a suitable penalty for violation of any provisions of this Act; providing that it shall be the duty of any peace officer operating in any county affected by the provisions of this Act to enforce the provisions of this Act and repealing all laws in conflict with any provisions of this Act, in so far as they relate to Van Zandt County, and declaring an emergency."

H. B. No. 127, "An Act validating, ratifying and confirming all bond issues heretofore voted and issued or heretofore voted and not issued, of all cities and towns in this State, for the purpose of constructing swimming pools, and declaring an emergency."

H. B. No. 138, "An Act providing an open season when it shall be lawful to hunt, take or kill squirrels in Montgomery, County, Texas; providing a bag limit; fixing a penalty for the violation hereof; repealing all laws in conflict herewith, and declaring an emergency."

H. B. No. 152, "An Act creating and establishing Callahan County Road District Number Three in Callahan County, Texas, under Article III, Section 52 of the Constitution for the purpose of the construction, operation and maintenance of macadamized, graveled or paved roads or turnpikes, or in aid thereof; describing the territory included therein; making the district a body corporate with authority to sue and be sued; authorizing the district to issue

bonds upon two-thirds vote of the qualified electors who own taxable property in said district and who have duly rendered the same for taxation voting at an election; etc., and declaring an emergency."

H. B. No. 153, "An Act amending Section 1 of Senate Bill No. 496, Chapter 168, Acts of the Legislature of Texas, passed at the Forty-fourth Regular Session of the Legislature of Texas, so as to authorize any city of more than forty thousand (40,000) population, according to the last preceding census, to codify and adopt a code of civil and criminal ordinances without the necessity of publication, providing for the taking effect of said code upon adoption; providing for the reception in evidence of such code when printed under the supervision of the governing body of said city and the effect of such admission in evidence, and declaring an emergency."

S. B. No. 12, "An Act providing that in counties having a population of not less than 40,905 and not more than 41,000 according to the last preceding Federal Census, the County Judge may appoint a court stenographer to be called and known as the official County Court Reporter of the County Court; to define and prescribe the duties of such court reporter, and fix the compensation and tenure of office; prescribing the fund from which the salary is to be paid, and prescribing the taxing of costs in civil suits in which answer is filed, and declaring an emergency."

S. B. No. 26, "An Act authorizing cities and towns to make contracts with water improvement and water control and improvement districts deriving their powers under Article XVI, Section 59, of the Constitution for water supply, fixing the maximum term of such contracts, limiting the liabilities of cities and towns under such contracts, making an election in such cities and towns a prerequisite to the making of such contracts, prescribing the method of calling and holding such elections and qualifications of voters; authorizing such districts to make such improvements needed for carrying out such contracts; authorizing such districts to secure their notes, war-



rants and bonds by pledging the revenues under such contracts, and to secure tax-supported bonds by the additional pledge of such revenues; providing that tax supported bonds heretofore voted but not yet issued may be issued and sold and the proceeds used for purposes necessary for the carrying out of such contracts without the necessity of another election, and that such bonds may be secured by a levy of taxes and by a pledge of revenues or by either such methods; providing that if this act shall be in conflict with any other act, the provisions of this act shall be effective; and declaring an emergency."

H. C. R. No. 14, Commending the President of the American Federation of Labor upon his stand in advocating parity prices for agricultural products.

#### Senate Bill No. 11 With House Amendments

Senator Nelson called up Senate Bill No. 11 from the President's table, for consideration of the House amendments to the bill.

The President laid the bill before the Senate, and the House amendments were read.

Senator Nelson moved that the Senate concur in the House amendments.

The motion prevailed by the following vote:

#### Yeas—29

Aikin	Pace
Brownlee	Rawlings
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Davis	Small
Head	Spears
Hill	Stone
Holbrook	Sulak
Isbell	Van Zandt
Lemens	Weinert
Moore	Westerfeld
Nelson	Winfield
Newton	Woodruff
Oneal	

#### Absent—Excused

Beck	Neal
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#### House Concurrent Resolution No. 49

The President laid before the Senate the following resolution, received from the House today:

H. C. R. No. 49, Declaring intent of Legislature with reference to provisions of S. B. No. 5, passed at the Second Called Session of the Forty-fourth Legislature.

The resolution was read; and by unanimous consent, it was considered at this time and was adopted.

#### Adjournment

Senator Roberts moved that the Senate adjourn until 10 o'clock a. m. next Monday.

Senator Hill moved that the Senate adjourn until 10 o'clock a. m. tomorrow.

Question first recurring on the motion of Senator Roberts, yeas and nays were demanded.

The motion was lost by the following vote:

#### Yeas—11

Brownlee	Roberts
Burns	Small
Cotten	Spears
Pace	Stone
Rawlings	Weinert
Redditt	

#### Nays—17

Aikin	Nelson
Collie	Newton
Davis	Oneal
Head	Shivers
Hill	Sulak
Holbrook	Van Zandt
Isbell	Westerfeld
Lemens	Woodruff
Moore	

#### Absent

Winfield

#### Absent—Excused

Beck	Neal
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The motion of Senator Hill prevailed; and the Senate, accordingly, at 7:45 o'clock p. m., adjourned until 10:00 o'clock a. m. tomorrow.

#### APPENDIX

#### Reports of Standing Committees

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

H. B. No. 38, A bill to be entitled "An Act to amend H. B. No. 141, Chapter 427, of the Acts of the Second Called Session of the Forty-fourth Legislature by amending Section 4 thereof by adding a new section to be designated Section 4a; further specifying general and specific powers to be had and exercised by the Nueces River Conservancy and Reclamation District; including the power of condemnation and other specific enumerated powers, but without limitation upon the general or specific powers otherwise conferred upon said District by said H. B. No. 141, Chapter 427, or by the Constitution of Texas, or by any other General or Special Law; . . . etc.; and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with recommendation that it do pass and be not printed.

SMALL, Chairman.

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. B. No. 62, A bill to be entitled "An Act authorizing, consenting to, and granting permission to John Wiese, Lonnie Wiese, and Tom Wiese to sue the State of Texas and the Highway Department for damages to their land; providing a saving clause; and declaring an emergency."

Have had said bill under consideration, and I am instructed to report same back to the Senate, with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs to whom was referred

H. B. No. 102, A bill to be entitled "An Act to amend H. B. No. 821 of the Acts of the Regular Session of the Forty-fifth Legislature and finding and declaring that there exist in the State insanitary or un-

safe dwelling accommodations; that there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford; that such conditions constitute a menace to the health, safety, morals, and welfare of the residents of the State and impair the economic values; that slum areas cannot be cleared through the operation of private enterprise; that housing projects will not be competitive with private enterprise; . . . etc., and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

House Bill No. 103, A bill to be entitled: "An Act to amend House Bill No. 820 of the Regular Session of the Forty-fifth Legislature; and defining certain words and phrases for its purposes; making certain findings and declaring necessity; authorizing cities, towns, counties, and other public bodies to aid housing projects of housing authorities or of the United States of America by dedicating, selling, conveying, or leasing any of its property to a housing authority or the Federal Government; by causing parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects; etc., and declaring an emergency,"

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

H. B. No. 110, have had the same under consideration and beg leave to report back to the Senate that it do pass and be not printed.

SMALL, Chairman.

Committee Room,  
October 21, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. B. No. 113, A bill to be entitled "An Act granting Frank Dees and Mrs. George Armstrong permission to sue the State and the State Highway Department, and declaring an emergency,"

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred House Bill No. 130, have had same under consideration and beg leave to report back to the Senate that it do pass and be not printed.

STONE, Chairman.

Committee Room,  
October 21, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

H. B. No. 133, A bill to be entitled "An Act amending Section 13 of Senate Bill No. 185, Acts of the Regular Session of the Forty-fifth Legislature; re-allocating the funds provided for therein,"

Have had same under consideration, and I am instructed to report it back to the Senate, with the recommendation that it do not pass, but that Committee Substitute therefor do pass, and be mimeographed, and not otherwise printed.

REDDITT, Chairman.

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Agriculture, to whom was referred

H. B. No. 135, A bill to be entitled "An Act amending Article 3881, Revised Civil Statutes of Texas, 1925; and declaring an emergency,"

Have had the same under consideration and I am instructed to report it back to the Senate with recommendation that it do pass and be not printed.

DAVIS, Chairman.

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Agriculture, to whom was referred

S. B. No. 27, A bill to be entitled "An Act to be known as the 'State Soil Conservation Act,' reciting the legislative determination and declaration of policy; describing the consequence of soil erosion and the depletion of the fertility of the soil; reciting appropriate corrective methods; defining certain words and phrases used in this Act; establishing the State Soil Conservation Board; establishing five (5) State Districts from which members of the State Soil Conservation Board are to be elected; defining the powers and duties of said members acting through and for said State Soil Conservation Board; providing for the establishing of County Soil Conservation Advisory Committees; defining the duties and compensation of the members thereof; providing for the compensation of members of the State Soil Conservation Board, etc., and declaring an emergency,"

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass as amended and be not printed.

DAVIS, Chairman.

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs to whom was referred

S. C. R. No. 8, by Spears, Granting L. M. Anderson permission to sue the State of Texas, and the State Highway Department.

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,  
October 22, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Enrolled Bills beg to report we have carefully examined, compared and read S. B. No. 24, and find same correctly enrolled.

WESTERFELD, Chairman.

Committee Room,  
October 21, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Engrossed Bills beg to report we have carefully examined, compared and read Senate Bills Nos. 25, 26, 29 and 18, and find same correctly engrossed.

ROBERTS, Chairman.

Committee Room,  
October 21, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Engrossed Bills beg to report we have carefully examined, compared and read S. C. R. No. 12, and find same correctly engrossed.

ROBERTS, Chairman.

Committee Room,  
October 21, 1937.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Engrossed Bills, beg to report we have carefully examined, compared and read S. B. No. 11, and find same correctly engrossed.

ROBERTS, Chairman.

## FIFTEENTH DAY

(Saturday, October 23, 1937)

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by President Woodul.

The roll was called, and the following Senators were present:

Aikin	Pace
Beck	Rawlings
Brownlee	Redditt
Collie	Roberts
Cotten	Shivers
Davis	Small
Head	Spears
Hill	Stone
Holbrook	Sulak
Isbell	Van Zandt
Lemens	Weinert
Moore	Westerfeld
Nelson	Winfield
Newton	Woodruff
Oneal	

Absent—Excused

Burns Neal

A quorum was announced present.

The invocation was offered by the Chaplain.

On motion of Senator Roberts, and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with.

## Leaves of Absence Granted

Senator Neal was granted leave of absence for today, on account of illness, on motion of Senator Shivers.

Senator Burns was granted leave of absence for today, on account of important business, on motion of Senator Shivers.

## Reports of Standing Committees

Reports on House Bills Nos. 57, 73, 118, 129, 146, 150, 151, 167, and 161, and on H. C. R. No. 46, H. C. R. No. 43, and H. C. R. No. 31, were submitted by the chairmen of the committees to which they were referred.

[See appendix for reports in full.]

## Senate Concurrent Resolution No. 13

Senator Redditt offered the following resolution:

Whereas, The present County and District road indebtedness in the